

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)
) CR-18-00258-EJD
 PLAINTIFF,)
) SAN JOSE, CALIFORNIA
 VS.)
) JUNE 22, 2022
 RAMESH "SUNNY" BALWANI,)
) VOLUME 39
 DEFENDANT.)
) PAGES 7157 - 7399

TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE
BY: JOHN C. BOSTIC
JEFFREY B. SCHENK
150 ALMADEN BOULEVARD, SUITE 900
SAN JOSE, CALIFORNIA 95113

BY: ROBERT S. LEACH
KELLY VOLKAR
1301 CLAY STREET, SUITE 340S
OAKLAND, CALIFORNIA 94612

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTERS:

IRENE L. RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074
LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

A P P E A R A N C E S: (CONT'D)

FOR DEFENDANT BALWANI: ORRICK, HERRINGTON & SUTCLIFFE LLP

BY: MOLLY MCCAFFERTY

SHAWN ESTRADA

SACHI SCHURICHT

THE ORRICK BUILDING

405 HOWARD STREET

SAN FRANCISCO, CALIFORNIA 94105

BY: JEFFREY COOPERSMITH

AARON BRECHER

AMANDA MCDOWELL

701 FIFTH AVENUE, SUITE 5600

SEATTLE, WASHINGTON 98104

BY: STEPHEN CAZARES

77 SOUTH FIGUEROA STREET, SUITE 3200

LOS ANGELES, CALIFORNIA 90017

BY: AMY WALSH

51 W 52ND STREET

NEW YORK, NEW YORK 10019

ALSO PRESENT:

OFFICE OF THE U.S. ATTORNEY

BY: MADDI WACHS, PARALEGAL

SARA SLATTERY, PARALEGAL

ORRICK, HERRINGTON & SUTCLIFFE

JENNIFER CYGNOR, PARALEGAL

PROLUMINA

BY: COREY ALLEN

2200 SIXTH AVENUE, SUITE 425

SEATTLE, WASHINGTON 98121

UNITED STATES POSTAL INSPECTION SERVICE

BY: CHRISTOPHER MCCOLLOW

FEDERAL BUREAU OF INVESTIGATION

BY: MARIO C. SCUSSEL

UNITED STATES FOOD & DRUG

ADMINISTRATION

BY: GEORGE SCAVDIS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX OF PROCEEDINGS

DEFENDANT'S CLOSING ARGUMENT BY MR. COOPERSMITH P. 7160

SAN JOSE, CALIFORNIA

JUNE 22, 2022

P R O C E E D I N G S

(COURT CONVENED AT 9:12 A.M.)

(JURY IN AT 9:12 A.M.)

THE COURT: WE'RE BACK ON THE RECORD. ALL COUNSEL
ARE PRESENT.

MR. BALWANI IS PRESENT. AND OUR JURY IS PRESENT.

GOOD MORNING, LADIES AND GENTLEMEN.

BEFORE WE BEGIN, LET ME ASK OUR JURY IF ANY OF YOU HAVE
HAD OCCASION SINCE OUR BREAK TO READ OR LEARN OR DISCUSS
ANYTHING ABOUT THIS CASE? IF THAT HAS HAPPENED, WOULD YOU
PLEASE RAISE YOUR HAND.

AGAIN, I SEE NO HANDS. THANK YOU AGAIN FOR YOUR FIDELITY
TO THE ADMONITION.

MR. COOPERSMITH, WOULD YOU LIKE TO CONTINUE WITH YOUR
ARGUMENT, SIR?

MR. COOPERSMITH: YES, YOUR HONOR.

THE COURT: PLEASE CONTINUE. THANK YOU.

MR. COOPERSMITH: MAY I REMOVE MY MASK, YOUR HONOR?

THE COURT: OF COURSE, YES.

**(MR. COOPERSMITH RESUMED HIS CLOSING ARGUMENT ON BEHALF OF
THE DEFENDANT.)**

MR. COOPERSMITH: GOOD MORNING EVERYONE.

WE HAVE A LOT TO GET THROUGH TODAY, SO THANK YOU IN
ADVANCE FOR YOUR CONTINUED PATIENCE AND ATTENTIVENESS.

09:13AM 1 I DIDN'T SAY THIS YESTERDAY, BUT IF YOU NEED A BREAK FOR
09:13AM 2 SOME REASON, RAISE YOUR HAND AND JUDGE DAVILA CAN DECIDE
09:13AM 3 WHETHER WE'LL GET A BREAK.

09:13AM 4 I'LL TRY TO TAKE, OR ASK JUDGE DAVILA FOR BREAKS AT
09:14AM 5 CERTAIN TIMES, BUT IF THERE'S SOME REASON BEFORE THAT, JUST
09:14AM 6 PLEASE GO AHEAD AND DON'T BE SHY ABOUT THAT. THANK YOU.

09:14AM 7 I WANT TO START THIS MORNING WITH ONE ISSUE AND SHOW
09:14AM 8 SOMETHING THAT YOU'VE SEEN YESTERDAY JUST TO ADDRESS SOMETHING
09:14AM 9 THAT THE GOVERNMENT SAID IN THEIR CLOSING.

09:14AM 10 THIS IS, YOU MIGHT REMEMBER FROM YESTERDAY, IS THE START
09:14AM 11 OF ALL OF THE VALIDATION REPORTS FOR THE CLIA LAB THAT
09:14AM 12 DR. ROSENDORFF SIGNED DURING THE TIME HE WAS AT THERANOS. YOU
09:14AM 13 CAN SEE IT GOES FROM SEPTEMBER OF 2013 THROUGH SEPTEMBER OF
09:14AM 14 2014.

09:14AM 15 AND THE POINT I WANTED TO JUST ADDRESS REALLY QUICKLY IS
09:14AM 16 DURING THE GOVERNMENT'S CLOSING, THEY SHOWED YOU A CHART THAT
09:14AM 17 THEY CLAIMED SHOWED SOME TYPE OF CORRELATION BETWEEN THERANOS'S
09:14AM 18 RAISING OF INVESTOR FUNDS AND VALIDATION OF ASSAYS IN THE CLIA
09:14AM 19 LAB.

09:14AM 20 AND IT JUST DOESN'T WORK. THEY CERTAINLY POINTED TO SOME
09:15AM 21 OF THE VALIDATIONS ON THE LEFT SIDE OF THE CHART IN THE FALL OF
09:15AM 22 2013, BUT, OF COURSE, THAT'S WHEN THERANOS WAS GOING THROUGH
09:15AM 23 THE LAUNCH WITH WALGREENS, SO OF COURSE THERE'S GOING TO BE A
09:15AM 24 LOT OF VALIDATION WORK DONE AT THAT TIME.

09:15AM 25 BUT THEN WHEN YOU GO TO THE RIGHT SIDE OF THE CHART YOU

09:15AM 1 CAN SEE ALL OF THE VALIDATION WORK THAT OCCURS IN FEBRUARY,
09:15AM 2 MARCH, AND APRIL AND LATER.

09:15AM 3 AND JUST TO ORIENT EVERYONE IN TIME, AND WE'LL SEE THIS
09:15AM 4 LATER, BUT MR. GROSSMAN INVESTED -- HIS INVESTMENT WAS
09:15AM 5 FEBRUARY 6TH OF 2014.

09:15AM 6 AND THEN THE RDV INVESTMENT AND MR. MOSLEY'S INVESTIGATION
09:15AM 7 WERE IN OCTOBER OF '14. SO ALL OF THESE VALIDATIONS IN
09:15AM 8 FEBRUARY, THAT DOESN'T -- THEY DON'T CORRELATE WITH ANY NEED TO
09:15AM 9 FUND RAISE.

09:15AM 10 SO I JUST WANTED TO POINT THAT OUT BECAUSE IT WAS
09:15AM 11 SOMETHING THAT THE GOVERNMENT -- THEY HAD A CHART THAT THEY
09:15AM 12 CONCOCTED ABOUT THAT, BUT IT'S JUST NOT CORRECT.

09:15AM 13 OKAY. WHEN WE LEFT OFF YESTERDAY, THOUGH, WE WERE TALKING
09:16AM 14 ABOUT QUALITY CONTROL, AND I JUST HAVE A LITTLE BIT MORE TO SAY
09:16AM 15 ABOUT THAT.

09:16AM 16 SO YOU MAY RECALL FROM THE TESTIMONY OF DR. ROSENDORFF
09:16AM 17 THAT THIS WAS A QUALITY SYSTEMS PRESENTATION THAT WAS
09:16AM 18 LONGLY GEE, WHO WAS THE QUALITY CONTROL MANAGER, PRESENTED AT
09:16AM 19 THERANOS AND THE DATE OF IT IS JULY 10TH, 2014.

09:16AM 20 AND WHEN YOU LOOK AT THE PAGE THAT IS ON THE SCREEN NOW,
09:16AM 21 IT'S PAGE 12 OF EXHIBIT 13809, THIS IS A QUALITY CONTROL GRAPH
09:16AM 22 THAT MR. GEE PRESENTED SHOWING THAT THE Q1, THAT'S JANUARY,
09:16AM 23 FEBRUARY, AND MARCH, THE FIRST QUARTER OF 2014, THAT AS YOU CAN
09:16AM 24 SEE, 2.9 PERCENT OF THE CONTROLS, THE QUALITY CONTROLS FAILED.

09:16AM 25 NOW, THE GOVERNMENT SHOWED YOU A CHART YESTERDAY, AND YOU

09:17AM 1 SAW THIS AT TRIAL, TOO, THAT HAD QUALITY CONTROL RESULTS IN THE
09:17AM 2 MONTH OF MARCH OF 2014, JUST THAT MONTH. AND THERE WAS SOME
09:17AM 3 TESTIMONY ABOUT WHETHER THAT WAS A TYPICAL MONTH OR NOT.

09:17AM 4 THIS IS WHAT MR. GEE PRESENTED.

09:17AM 5 NOW, THERE WAS SOME DEBATE, AND DR. ROSENDORFF HAD SOME
09:17AM 6 EXPLANATION, AND IT INCLUDES THE THERANOS TECHNOLOGY, THE
09:17AM 7 EDISONS AND THE MODIFIED PREDICATES, BUT THERE REALLY WOULD BE
09:17AM 8 ONLY ONE WAY TO RESOLVE THAT DEBATE, IF THERE IS ONE, AS TO
09:17AM 9 WHAT THE QUALITY CONTROL RATE OR THE FAILURE RATE IS. IS IT
09:17AM 10 2.9 PERCENT? IS IT HIGHER? IS IT MORE CONSISTENT WITH THE
09:17AM 11 MARCH FIGURES THAT THE GOVERNMENT SHOWED YOU.

09:17AM 12 THE ONLY WAY TO RESOLVE THAT IS TO GO INTO THE LABORATORY
09:17AM 13 INFORMATION SYSTEMS WHERE, AS DR. ROSENDORFF TESTIFIED, ALL OF
09:17AM 14 THE QUALITY CONTROL INFORMATION IS STORED, AND YOU CAN LOOK AT
09:17AM 15 EVERY SINGLE DAY, EVERY SINGLE MONTH, EVERY SINGLE WEEK, AND
09:17AM 16 THEN YOU WOULD KNOW HOW TO RESOLVE THIS.

09:17AM 17 BUT THIS IS THE INFORMATION THAT MR. GEE PRESENTED.

09:18AM 18 AND I SHOULD NOTE IF YOU GO TO THE NEXT PAGE, THIS WAS
09:18AM 19 MR. GEE PRESENTING THE MATERIAL ACCORDING TO DR. ROSENDORFF,
09:18AM 20 NOT MR. BALWANI. THIS WAS THE QUALITY CONTROL MANAGER THAT
09:18AM 21 MR. OR DR. ROSENDORFF HIRED, RECOMMENDED TO BE HIRED AND WORKED
09:18AM 22 THERE, AND THAT YOU DIDN'T HEAR FROM.

09:18AM 23 WHICH BY THE WAY, IT MIGHT BE ANOTHER WAY TO RESOLVE THIS
09:18AM 24 ISSUE. IF THE GOVERNMENT CALLED MR. GEE, HE COULD TELL YOU
09:18AM 25 HIMSELF ABOUT THIS. BUT THE GOVERNMENT DECIDED NOT TO DO THAT.

09:18AM 1 INSTEAD, THEY PRESENTED TO YOU A CHART SHOWING A MONTH.

09:18AM 2 AND AGAIN, IT DOESN'T SEEM TO REALLY RESOLVE ANYTHING

09:18AM 3 WITHOUT KNOWING THE BACKGROUND AND THE DATA IN THE LIS.

09:18AM 4 OKAY. LET'S MOVE TO A DIFFERENT TOPIC. YOU'VE HEARD A

09:18AM 5 LOT ABOUT THIS ASSAY, HCG. AS I SAID YESTERDAY, THIS IS

09:18AM 6 DESIGNED TO DETERMINE PREGNANCY AND ALSO TO EVALUATE WHETHER

09:19AM 7 THIS IS A VIABLE PREGNANCY.

09:19AM 8 SO HCG WAS AN ASSAY THAT THERANOS USED. AND THE PICTURE

09:19AM 9 THAT THE GOVERNMENT PRESENTED OF HCG IS JUST INCORRECT AND

09:19AM 10 INCOMPLETE, AND LET ME GO THROUGH THAT STEP BY STEP BECAUSE THE

09:19AM 11 GOVERNMENT SPENT A LONG TIME ON THIS AND SO I THINK IT'S

09:19AM 12 IMPORTANT TO GET ALL OF THE FACTS OUT.

09:19AM 13 SO, FIRST OF ALL, THIS IS THE VALIDATION REPORT THAT

09:19AM 14 DR. ROSENDORFF SIGNED IN 2014. IT WAS MARCH 19TH, 2014.

09:19AM 15 YOU CAN SEE THAT IT ALSO HAS THE SIGNATURES OF

09:19AM 16 DR. SIVARAMAN AND DR. YOUNG AS THE REVIEWERS, AND THEN THE

09:19AM 17 APPROVAL OF DR. ROSENDORFF.

09:19AM 18 AND THEN LATER DR. DHAWAN SIGNED THAT AS WELL, THAT VERY

09:19AM 19 LAST SIGNATURE.

09:19AM 20 SO THAT'S WHEN THE HCG ASSAY VALIDATION WAS COMPLETED, AND

09:19AM 21 THAT MEANT, AS WE ALL KNOW NOW, THE ASSAY COULD GO INTO THE

09:19AM 22 CLIA LAB FOR PATIENT USE.

09:19AM 23 NOW, THE GOVERNMENT SHOWED YOU THIS NEXT EXHIBIT WHERE ON

09:20AM 24 MAY 30TH OF 2014 DR. ROSENDORFF WROTE THIS EMAIL TO THE WHOLE

09:20AM 25 CLS TEAM, THE CLINICAL LAB SCIENTIST TEAM, AND HE SAID ALL

09:20AM 1 FURTHER HCG TESTING (CTN OR VACUTAINER) BOTH THE FINGERSTICKS
09:20AM 2 AND VENOUS DRAWS, ARE TO BE RUN ON THE IMMULITE; HOLD ALL
09:20AM 3 EDISON CTN RESULTS, DO NOT RELEASE, AND THEN ANAM CONTACT
09:20AM 4 PENDING HCG FOR REDRAW.

09:20AM 5 AND SO THAT'S DR. ROSENDORFF'S EMAIL, AND THAT WAS HIS
09:20AM 6 PREROGATIVE AS LAB DIRECTOR. IF HE SAW AN ISSUE, HE SHOULD DO
09:20AM 7 WHAT HE THINKS IS THE RIGHT THING TO DO. IN THIS CASE HE
09:20AM 8 DECIDED TO HALT HCG TESTING AND RUN IT ON A COMMERCIAL MACHINE
09:20AM 9 CALLED THE IMMULITE AT THAT PARTICULAR TIME. THAT'S MAY 30TH.

09:20AM 10 OKAY. WE GO TO THE NEXT SLIDE. THIS IS THE TESTIMONY
09:20AM 11 FROM DR. ROSENDORFF ON DIRECT EXAMINATION, AND HE MISSPOKE AT
09:21AM 12 FIRST. HE SAID, "MY UNDERSTANDING WAS NO, THAT IT WENT BACK ON
09:21AM 13 THE IMMULITE WITHOUT MY KNOWLEDGE."

09:21AM 14 BUT I THINK HE MEANT EDISONS, SO THEN HE CORRECTS IT. I'M
09:21AM 15 SORRY. IT WENT BACK ON THE EDISON WITHOUT MY KNOWLEDGE.

09:21AM 16 SO DR. ROSENDORFF IS CLAIMING THAT EVEN THOUGH HE SAID ON
09:21AM 17 MAY 30TH, STOP, THAT WAS SOMEHOW IGNORED AND IT WENT BACK ON
09:21AM 18 THE EDISON DEVICE, THIS HCG ASSAY, WITHOUT HIS KNOWLEDGE.

09:21AM 19 NOTHING COULD BE FURTHER FROM THE TRUTH.

09:21AM 20 ON MAY 30TH, 2014, THAT SAME DAY, ELIZABETH HOLMES WRITES
09:21AM 21 TO SUNNY BALWANI, "I'VE DONE MANY MEETINGS ON THIS DAY."

09:21AM 22 SO THEY'RE TAKING THIS SERIOUSLY. IT'S NOT, WELL, THAT'S
09:21AM 23 TOO BAD HCG IS NOT WORKING, TOO BAD. LET'S GO FORWARD ANYWAY.

09:21AM 24 NO. THEY'RE TAKING THIS SERIOUSLY AND THEY'RE HAVING
09:21AM 25 MEETINGS.

09:21AM 1 SO THEN WHAT HAPPENS?

09:22AM 2 THIS EMAIL IS FOUR DAYS LATER ON JUNE 4TH. AND

09:22AM 3 DR. ROSENDORFF SAYS TO SUNNY BALWANI, "SUNNY,

09:22AM 4 "DANIEL, CHINMAY AND I HAVE DISCUSSED THE PLAN FOR HCG."

09:22AM 5 HE SAYS DETERMINE AN INVALID TIP COUNT CUT OFF. THIS IS

09:22AM 6 DR. ROSENDORFF.

09:22AM 7 GOING FORWARD. CHANGE HCG TO VACUTAINER AND RUN ON

09:22AM 8 IMMULITE. OKAY, THAT'S GOING TO THE COMMERCIAL DEVICES.

09:22AM 9 NEXT, HE SAYS, HOLD CURRENT CTN ORDERS FOR HCG AND CALL

09:22AM 10 FOR REDRAW ON VACUTAINER AS NEEDED.

09:22AM 11 SO HOLD THE ORDERS, STILL CONSISTENT WITH HIS MAY 30TH

09:22AM 12 EMAILS.

09:22AM 13 AND THEN HE SAYS, NUMBER 3, WHICH THE GOVERNMENT DIDN'T

09:22AM 14 TALK ABOUT, RESUME CTN HCG WHEN WE HAVE RESOLVED THESE ISSUES.

09:22AM 15 THE CTN IS THE CAPILLARY TO THE NANOTAINER, SO THAT'S THE

09:22AM 16 FINGERSTICK TESTING. THAT'S THE EDISON. RESUME CTN HCG WHEN

09:22AM 17 WE HAVE RESOLVED THESE ISSUES.

09:22AM 18 SO HE WANTS THESE ISSUES RESOLVED. THAT MAKES SENSE.

09:22AM 19 BUT HE DIDN'T SAY HALT FOR ALL TIME. HE SAYS LET'S SEE IF

09:23AM 20 WE CAN RESOLVE THE ISSUES AND THEN WE CAN CONTINUE.

09:23AM 21 SO THEN WHAT HAPPENS?

09:23AM 22 HERE'S AN EMAIL THAT THE GOVERNMENT DIDN'T SHOW YOU ON

09:23AM 23 EXAMINATION OF DR. ROSENDORFF OR DURING THEIR CLOSING.

09:23AM 24 SO DR. ROSENDORFF STARTS OUT AT THE BOTTOM HE SAYS,

09:23AM 25 "PLEASE HOLD THE RESULT UNTIL CHINMAY IS DONE WITH HIS RLU

09:23AM 1 STUDY TODAY -- WE CAN RUN CTN HCG BUT NEED TO HOLD RESULTS
09:23AM 2 UNTIL WE KNOW WHAT THE INVALID CUTOFF IS."

09:23AM 3 SO HE SAYS GO AHEAD AND COLLECT THE FINGERSTICK SAMPLES,
09:23AM 4 BUT WE STILL NEED THIS INFORMATION FROM DR. PANGARKAR BEFORE WE
09:23AM 5 CAN GO FORWARD.

09:23AM 6 AND THEN MS. ALAMDAR WRITES, "ADAM/CHINMAY,
09:23AM 7 "ANY UPDATES ON THE HCG? WE HAVE MULTIPLE PATIENTS
09:23AM 8 PENDING TO BE RELEASED."

09:23AM 9 THAT'S SIX DAYS AFTER DR. ROSENDORFF SAYS HALT.

09:23AM 10 THEN DR. ROSENDORFF WRITES, "CHINMAY WILL BE IMPLEMENTING
09:23AM 11 A SCRIPT SHORTLY TO RE-QUALIFY VALID VERSUS INVALID HCG VALUES.
09:24AM 12 STAY TUNED."

09:24AM 13 AND THEN ON THE TOP DR. PANGARKAR FOLLOWS THROUGH WITH
09:24AM 14 THAT AND HE WRITES TO DR. ROSENDORFF AND HE SAYS, AND
09:24AM 15 MS. ALAMDAR, HE SAYS, "HI HODA," AND HE HAS TWO SAMPLE NUMBERS,
09:24AM 16 AND HE SAYS "ARE READY TO BE RELEASED. THE LATEST RESULTS THAT
09:24AM 17 YOU CAN RELEASE ARE IN," AND THERE'S A SHARED DRIVE THAT HE
09:24AM 18 PUTS FORWARD THERE. "WE ARE WORKING ON ANOTHER SAMPLE AND WILL
09:24AM 19 LET YOU KNOW WHEN IT IS READY."

09:24AM 20 SO DR. ROSENDORFF AGAIN IS SAYING HOLD OFF UNTIL WE DO THE
09:24AM 21 STUDY THAT CHINMAY PANGARKAR IS DOING AND CHINMAY PANGARKAR DID
09:24AM 22 HIS WORK AND HE'S NOW INFORMING DR. ROSENDORFF FOR RELEASING.
09:24AM 23 AND YOU SEE NOTHING THAT THERE'S ANY PUSHBACK FROM
09:24AM 24 DR. ROSENDORFF ON THAT AT ALL.

09:24AM 25 AND IF THERE'S ANY DOUBT ABOUT THAT, LET'S GO TO THE NEXT

09:24AM 1 DOCUMENT, WHICH IS ANOTHER EMAIL. AND THIS IS JUNE 9TH. THIS
09:24AM 2 IS NINE DAYS AFTER DR. ROSENDORFF SAYS HALT HCG TESTING.

09:24AM 3 AT THE BOTTOM THERE TINA LIN SAID, "HI CLS'S," THOSE ARE
09:25AM 4 THE CLINICAL LAB SCIENTISTS.

09:25AM 5 "CTN FOR A NUMBER, WAS CALCULATED NOT TO HAVE ENOUGH
09:25AM 6 PLASMA TO RUN HCG USING THE AUTOMATED SOFTWARE AFTER RUNNING
09:25AM 7 TSH AND SO IT WAS RUN OUTSIDE OF THE SOFTWARE. THE INITIAL RUN
09:25AM 8 RESULT WAS INVALID. THE RERUN RESULT WAS OORH," OUT OF RANGE
09:25AM 9 HIGH.

09:25AM 10 AND THEN WHAT HAPPENS?

09:25AM 11 MS. ALAMDAR TELLS DR. ROSENDORFF, "I BELIEVE I CAN REPORT
09:25AM 12 THIS PATIENT AS GREATER THAN 4941."

09:25AM 13 AND DR. ROSENDORFF SAYS, "YES PLEASE REPORT AS GREATER
09:25AM 14 THAN 4941, IF THAT IS THE LATEST OORH VALUE."

09:25AM 15 SO HERE DR. ROSENDORFF IS SPECIFICALLY SAYING THAT THIS
09:25AM 16 CTN SAMPLE, THAT'S THE FINGERSTICK SAMPLE FOR EDISON, SHOULD BE
09:25AM 17 RELEASED.

09:25AM 18 SO WHEN HE SAYS THAT HE NEVER AUTHORIZED IT TO GO BACK ON
09:25AM 19 EDISON, THAT IS SIMPLY NOT TRUE, OKAY?

09:25AM 20 AND THAT'S WHY THESE CONTEMPORANEOUS DOCUMENTS ARE WHERE
09:26AM 21 YOU SEE WHAT THE FACTS REALLY ARE. IT'S NOT PEOPLE'S MEMORIES,
09:26AM 22 YOU KNOW, LONG AFTER THE FACT WHEN THEY HAVE CERTAIN
09:26AM 23 INCENTIVES, WHICH I'LL EXPLAIN IN A MINUTE.

09:26AM 24 LET'S GO TO THE NEXT SLIDE.

09:26AM 25 AND IF THERE'S ANY DOUBT ABOUT THAT, THIS IS TALKING ABOUT

09:26AM 1 THE EMAIL THAT I JUST SHOWED YOU.

09:26AM 2 AND SO THE QUESTION ON RECROSS-EXAMINATION TO

09:26AM 3 DR. ROSENDORFF WAS, "AND SO YOU WERE DIRECTING MS. ALAMDAR TO
09:26AM 4 RELEASE THE RESULTS FOR THAT CTN SAMPLE; CORRECT?"

09:26AM 5 HE SAYS YES.

09:26AM 6 AND THIS IS FOR HCG?

09:26AM 7 YES.

09:26AM 8 DR. ROSENDORFF'S TESTIMONY, WHICH HE WAS FORCED TO GIVE
09:26AM 9 AFTER LOOKING AT THE DOCUMENTS THAT WE SHOWED HIM ON
09:26AM 10 CROSS-EXAMINATION.

09:26AM 11 SO WHY IS DR. ROSENDORFF DOING THIS? LET'S JUST THINK
09:26AM 12 ABOUT THIS FOR A MINUTE. HE TESTIFIED THAT HE'S STILL IN THE
09:26AM 13 LAB INDUSTRY.

09:26AM 14 AND SOMEONE LIKE THAT, AFTER ALL THAT HAS HAPPENED HERE
09:26AM 15 WITH THERANOS, I MEAN, AFTER ALL, WE'RE IN A FEDERAL CRIMINAL
09:26AM 16 TRIAL HERE, THE LAST THING THAT SOMEONE LIKE DR. ROSENDORFF
09:26AM 17 WANTS TO SAY IS, OH, YES, WHEN I WAS AT THERANOS, I APPROVED
09:27AM 18 THE TEST AND I RELEASED THE RESULT.

09:27AM 19 AT THIS POINT HE WANTS TO DISTANCE HIMSELF AND SAY, OH, I
09:27AM 20 HAD NOTHING TO DO WITH THIS. I DIDN'T DO ANYTHING. THEY DID
09:27AM 21 THIS WITHOUT MY KNOWLEDGE. HE NEEDS TO DO THAT TO PLAY THE
09:27AM 22 HERO AT THIS POINT BECAUSE HE'S STILL IN THE LAB INDUSTRY AND
09:27AM 23 WE'RE NOW BASICALLY IN A FEDERAL CASE.

09:27AM 24 BUT REGARDLESS OF WHAT YOU THINK ABOUT DR. ROSENDORFF, THE
09:27AM 25 FACTS ARE THAT WHEN HE SAID THAT HE NEVER ALLOWED HCG TO GO

09:27AM 1 BACK ON TO THE EDISON DEVICE, THAT WAS SIMPLY UNTRUE.

09:27AM 2 NOW, I THINK THE GOVERNMENT KIND OF COMPOUNDED THE PROBLEM
09:27AM 3 HERE BECAUSE EVEN AFTER THAT, DR. ZACHMAN TESTIFIED LATER THAN
09:27AM 4 DR. ROSENDORFF, THEY ASKED HER THIS QUESTION ON REDIRECT:

09:27AM 5 "DURING YOUR CONVERSATIONS WITH THERANOS, WERE YOU EVER TOLD AT
09:27AM 6 ANY TIME THAT THERANOS'S LAB DIRECTOR MADE THE DECISION TO HALT
09:28AM 7 ALL HCG TESTING ON THE COMPANY'S EDISON DEVICE IN MAY OF 2014?"

09:28AM 8 SHE SAID NO.

09:28AM 9 WELL, THE PROBLEM WITH THAT QUESTION AND ANSWER IS THAT
09:28AM 10 IT'S NOT COMPLETE. AT THIS POINT THE GOVERNMENT KNEW ABOUT THE
09:28AM 11 EMAILS THAT WE SHOWED DR. ROSENDORFF AND HIS ADMISSION THAT,
09:28AM 12 YES, HE RELEASED -- AUTHORIZED THE RELEASE OF THE FINGERSTICK
09:28AM 13 RESULT.

09:28AM 14 SO THAT'S A COMPLETELY INVALID QUESTION.

09:28AM 15 AND OF COURSE, YOU KNOW, DR. ZACHMAN DOESN'T KNOW ANYTHING
09:28AM 16 ABOUT THIS, RIGHT? SHE'S JUST COMING IN. SHE WAS THE DOCTOR
09:28AM 17 FOR BRITTANY GOULD.

09:28AM 18 AND THE SAME THING HAPPENED WITH DR. WOOTEN:

09:28AM 19 QUESTION. AND IF YOU HAD KNOWN IN 2015 THAT HCG TESTING
09:28AM 20 AT THERANOS HAD BEEN HALTED BY THE LAB DIRECTOR, WOULD THAT
09:28AM 21 HAVE AFFECTED YOUR DECISION TO YOURSELF TO GET HCG TESTING AT
09:28AM 22 THERANOS?

09:28AM 23 AND SHE SAYS, IT WOULDN'T HAVE HALTED ME.

09:28AM 24 WHY IS THAT? YOU WOULD HAVE ASSUMED THEY FIXED THE
09:28AM 25 PROBLEM?

09:28AM 1 CORRECT.

09:28AM 2 BUT IF THEY HADN'T, WOULD THAT HAVE AFFECTED YOUR OPINION?

09:28AM 3 CORRECT.

09:28AM 4 WELL, THE PROBLEM WITH THAT EXCHANGE IS THAT, AGAIN, THE

09:28AM 5 CORRECT HYPOTHETICAL IS -- WELL, NOT EVEN A HYPOTHETICAL, THE

09:29AM 6 REALITY IS THAT IF DR. WOOTEN, IF YOU KNEW THAT THEY HAD AN

09:29AM 7 ISSUE WITH HCG AND THEY DID THE STUDY AND THEY FIXED IT, AND

09:29AM 8 THE LAB DIRECTOR SAID PLEASE PROCEED, WOULD THAT HAVE AFFECTED

09:29AM 9 YOUR OPINION?

09:29AM 10 THAT'S A VERY DIFFERENT QUESTION.

09:29AM 11 SO THIS CONTINUED SUGGESTION THAT DR. ROSENDORFF DIDN'T

09:29AM 12 APPROVE THE RETURN TO EDISON IS JUST WRONG. AND IT'S IN THE

09:29AM 13 FACE OF INCONTROVERTIBLE EVIDENCE, WHICH IS PUZZLING.

09:29AM 14 OKAY. LET'S TALK ABOUT ANOTHER TOPIC, PROFICIENCY TESTING

09:29AM 15 AT THERANOS. SO YOU'VE HEARD A LOT ABOUT THIS. SOMETIMES IT'S

09:29AM 16 CALLED PT.

09:29AM 17 SO JUST TO LEVEL SET HERE, WHAT THIS MEANS IS THAT

09:29AM 18 CLINICAL LABORATORIES IN THE UNITED STATES HAVE TO DO THIS SORT

09:29AM 19 OF EXAMINATION. IT'S APPROXIMATELY EVERY SIX MONTHS.

09:29AM 20 AND WHAT HAPPENS IS TRADITIONAL PT IN THAT WORLD SAMPLES,

09:30AM 21 PT SAMPLES, OFTEN THEY'RE SYNTHETIC MATERIAL, BUT THEY COME

09:30AM 22 FROM DIFFERENT OUTSIDE GROUPS, LIKE THE COUNCIL OF AMERICAN

09:30AM 23 PATHOLOGISTS, CAP, OR API, OR SOMETIMES -- NEW YORK STATE HAS A

09:30AM 24 PROGRAM AND THEY SEND SAMPLES TO LABS.

09:30AM 25 SO LABS ARE SUPPOSED TO TAKE THOSE SAMPLES AND RUN THEM ON

09:30AM 1 THEIR EQUIPMENT AND THEN REPORT THE RESULTS BACK TO THE OUTSIDE
09:30AM 2 TESTING AGENCY, LET'S SAY IT'S API.

09:30AM 3 AND THEN THE TRADITIONAL METHOD OF PT AS YOU HEARD AT
09:30AM 4 TRIAL YOU MAY REMEMBER IS WHAT THEY CALL PEER GROUP TESTING.

09:30AM 5 SO LET'S SAY THAT YOU'RE RUNNING A SIEMENS ADVIA MACHINE.
09:30AM 6 WELL, THERE ARE A LOT OF OTHER LABS IN THE COUNTRY THAT ARE
09:30AM 7 RUNNING A SIEMENS ADVIA MACHINE.

09:30AM 8 SO WHAT HAPPENS IS YOU RETURN YOUR RESULT THAT YOU GET AT
09:30AM 9 YOUR LAB TO API AND THEN THEY LOOK AT ALL THE OTHER RESULTS
09:30AM 10 FROM OTHER LABS THAT RAN THE SAME SAMPLE BATCH AND THEY DECIDE,
09:30AM 11 OKAY, WHERE DOES THE RESULT FROM ANY PARTICULAR LAB, SAY IT'S
09:30AM 12 THERANOS, FALL COMPARE TO THE PEER GROUPS? IT'S NOT LIKE IT'S
09:31AM 13 THE EXACT VALUE. IT'S LIKE ARE YOU WITHIN A RANGE THAT MAKES
09:31AM 14 SENSE OR ARE YOU OUTSIDE OF THE STANDARD DEVIATION, THINGS LIKE
09:31AM 15 THAT.

09:31AM 16 SO THERE'S A PEER GROUP COMPARISON, AND IT'S BASED ON THE
09:31AM 17 FACT THAT MANY LABS ARE RUNNING THE SAME TECHNOLOGY, YOU KNOW,
09:31AM 18 WHETHER IT'S A SIEMENS ADVIA OR SOME OTHER COMMERCIAL MACHINE.

09:31AM 19 THAT'S TRADITIONAL PT TESTING.

09:31AM 20 AND THERANOS DID THAT FOR ITS COMMERCIAL DEVICES, AND
09:31AM 21 WE'LL SEE SOME MORE ABOUT THAT.

09:31AM 22 BUT FOR THE COMMERCIAL FDA APPROVED MACHINES THAT THEY
09:31AM 23 WERE RUNNING IN THE LAB, THEY DID THAT, AND THAT WAS REQUIRED.

09:31AM 24 WELL, BECAUSE THIS WHOLE SYSTEM OF TRADITIONAL PT TESTING
09:31AM 25 IS BASED ON THIS PEER GROUP CONCEPT, WHAT IF YOU'RE RUNNING A

09:31AM 1 LAB THAT DOESN'T HAVE ANY PEERS? YOU'RE WORKING WITH YOUR OWN
09:31AM 2 TECHNOLOGY, IN THIS CASE THE THERANOS EDISON, OR THE MODIFIED
09:31AM 3 PREDICATE DEVICES THAT THERANOS WAS USING.

09:31AM 4 THERE'S NO OTHER PEERS. THERE'S NO OTHER LAB THAT IS
09:31AM 5 RUNNING THAT EQUIPMENT. IT'S THERANOS'S PROPRIETARY
09:31AM 6 TECHNOLOGY.

09:31AM 7 SO THAT'S TAKEN INTO ACCOUNT AND THE METHODOLOGY FOR THAT
09:31AM 8 IS CALLED AAP, ALTERNATIVE ASSESSMENT PROCEDURE. IT SOUNDS
09:32AM 9 COMPLICATED BUT IT'S REALLY NOT. IT'S REALLY JUST A
09:32AM 10 HEAD-TO-HEAD COMPARISON USING REAL BLOOD SAMPLES OF THE
09:32AM 11 PROPRIETARY EQUIPMENT, IN THIS CASE THE EDISON OR THE MODIFIED
09:32AM 12 PREDICATES, WITH THE FDA COMMERCIAL DEVICES THAT THERANOS ALSO
09:32AM 13 HAD.

09:32AM 14 SO IT'S JUST HEAD-TO-HEAD COMPARISON. AND YOU TAKE FIVE
09:32AM 15 SAMPLES AND YOU GET THE BLOOD FROM EMPLOYEES OR SOME OTHER
09:32AM 16 SOURCE WHO DONATE IT, YOU RUN THE REAL BLOOD SAMPLES AND YOU DO
09:32AM 17 THIS HEAD-TO-HEAD COMPARISON, AND YOU SEE HOW YOUR TECHNOLOGY
09:32AM 18 STACKS UP AGAINST THE COMMERCIAL TECHNOLOGY, THE SO-CALLED GOLD
09:32AM 19 STANDARD TECHNOLOGY.

09:32AM 20 SO THAT'S THE AAP TECHNOLOGY. AND THERE'S A PROCEDURE FOR
09:32AM 21 THAT.

09:32AM 22 SO WHAT HAPPENED HERE AT THERANOS?

09:32AM 23 SO FROM THE VERY EARLY TIME IN JULY OF 2013, AND THAT'S
09:32AM 24 THE EMAIL THAT YOU'RE SEEING ON THE SCREEN, MR. BALWANI WAS
09:32AM 25 SENT THIS EMAIL FROM SILVIA CHANG WITH A COPY TO DR. ROSENDORFF

09:33AM 1 THAT SAID, "SUNNY,

09:33AM 2 "PER YOUR REQUEST, HERE ARE THE DETAILS FOR HANDLING,

09:33AM 3 SCHEDULING, AND SUBMITTING PROFICIENCY SAMPLES. I'VE ATTACHED

09:33AM 4 THE SOP FOR REFERENCE."

09:33AM 5 SO THIS WAS AT MR. BALWANI'S REQUEST THAT THEY WANTED TO

09:33AM 6 MAKE SURE THEY HAD THE RIGHT PT SYSTEM IN PLACE FROM AN EARLY

09:33AM 7 TIME, EVEN BEFORE THE WALGREENS LAUNCH.

09:33AM 8 SO HERE'S THE NEXT PAGE. THIS IS THE PROTOCOL OR THE SOP,

09:33AM 9 STANDARD OPERATING PROCEDURE, THAT MS. CHANG SENT BACK IN JULY

09:33AM 10 OF 2013. AND IT DEFINES RESPONSIBILITIES.

09:33AM 11 THE LABORATORY TESTING PERSONNEL ARE RESPONSIBLE FOR THE

09:33AM 12 FOLLOWING:

09:33AM 13 ON 4.2, THAT SECTION, IT SAYS THE LABORATORY TECHNICAL

09:33AM 14 SUPERVISOR IS RESPONSIBLE FOR MAKING SURE THAT PROFICIENCY

09:33AM 15 TESTING SAMPLES ARE IDENTIFIED AND PREPARED FOR THE LABORATORY.

09:33AM 16 AND THEN ENSURING THAT THE WORK IS DONE.

09:33AM 17 AND THEN AT THE BOTTOM, 4.3, THE LABORATORY DIRECTOR IS

09:33AM 18 RESPONSIBLE FOR THE FOLLOWING:

09:34AM 19 REVIEWING AND APPROVING EACH PT TESTING EVENT

09:34AM 20 DOCUMENTATION.

09:34AM 21 SO THAT'S THE RESPONSIBILITIES.

09:34AM 22 SO IT'S NOT ONLY RUNNING THE TESTS, BUT THEN THE LAB

09:34AM 23 DIRECTOR IS SUPPOSED TO REVIEW AND APPROVE. HOLD ON TO THAT

09:34AM 24 THOUGHT, BECAUSE I'LL GET BACK TO THAT IN JUST A BIT.

09:34AM 25 OKAY. AND THEN GOING ON WITH THIS SAME EXHIBIT, IT'S

09:34AM 1 13905 IS THE EXHIBIT NUMBER, ALTERNATIVE ASSESSMENT PROCEDURE.
09:34AM 2 AND IT DESCRIBES WHAT I JUST TOLD YOU.

09:34AM 3 FOR NON-CMS-REGULATED TESTS, FOR THOSE WHICH LACK FDA
09:34AM 4 CLEARANCE, COMMERCIAL OR EXTERNAL PT PROGRAMS MAY NOT BE
09:34AM 5 AVAILABLE FOR CERTAIN ANALYTES. IN SUCH INSTANCES, AN AAP MAY
09:34AM 6 HELP VALIDATE THE QUALITY OF ONGOING TEST SYSTEM PERFORMANCE.

09:34AM 7 AND THEN IT TALKS ABOUT IN SECTION 5.3.2 IN MOST CASES
09:34AM 8 BLIND RETESTING OF 3 TO 5 PATIENT SAMPLES BY A DIFFERENT
09:34AM 9 OPERATOR EVERY 6 MONTHS.

09:34AM 10 SO THAT'S THE PROCEDURE THAT WAS DISCUSSED IN JULY 2013.

09:35AM 11 SO THEN LATER, IF WE GO TO THE NEXT EXHIBIT, AND THIS IS
09:35AM 12 EXHIBIT 9939, DR. ROSENDORFF ACTUALLY PUTS THIS PROCEDURE IN
09:35AM 13 PLACE AT THERANOS. PROFICIENCY TESTING FOR THERANOS
09:35AM 14 LAB-DEVELOPED TESTS: EDISON 3.5.

09:35AM 15 SO THIS IS DR. ROSENDORFF'S PROCEDURE. AND YOU CAN SEE --

09:35AM 16 IF YOU GO BACK TO THE FIRST PAGE, MR. ALLEN.

09:35AM 17 -- IT'S SIGNED BY LI DING-CHIANG AND DR. YOUNG AND THEN
09:35AM 18 IT'S APPROVED BY DR. ROSENDORFF ON DECEMBER 2ND, 2013.

09:35AM 19 OKAY, IF WE GO TO THE NEXT PAGE. THE PURPOSE OF THIS
09:35AM 20 PROPOSAL IS TO DEVISE AN ALTERNATIVE ASSESSMENT PROTOCOL, AND
09:35AM 21 THEN IT SAYS FOR NONCMS REGULATED TESTS. IT'S BASICALLY THE
09:35AM 22 SAME THING THAT I JUST READ YOU, AND AAP WOULD BE APPROPRIATE
09:35AM 23 FOR THOSE CERTAIN TYPES OF TESTS.

09:36AM 24 AND IF WE GO TO THE NEXT PAGE, IT EXPLAINS THE
09:36AM 25 RESPONSIBILITIES OF THE TECHNICAL SUPERVISOR AND THE LAB

09:36AM 1 PERSONNEL.

09:36AM 2 AND THEN IN 3.4, IT SAYS THAT THE LABORATORY DIRECTOR IS
09:36AM 3 RESPONSIBLE FOR REVIEWING AND APPROVING EACH PT TESTING EVENT
09:36AM 4 DOCUMENTATION.

09:36AM 5 SO THAT'S DR. ROSENDORFF'S OWN PROCEDURE HE IMPLEMENTS ON
09:36AM 6 DECEMBER 2ND, 2013.

09:36AM 7 IF YOU GO TO THE NEXT PAGE, YOU CAN SEE THAT THIS IS THE
09:36AM 8 PROCEDURE. OBTAIN FIVE VENOUS CLINICAL SAMPLES. YOU SPLIT THE
09:36AM 9 SAMPLES INTO TWO ALIQUOTS, BASICALLY TWO CONTAINERS, AND THEN
09:36AM 10 YOU RUN THE SIEMENS IMMULITE 2000 AND THERANOS LDT, THE
09:36AM 11 LABORATORY DEVELOPED TEST, METHODS IN PARALLEL USING N EQUALS
09:36AM 12 FIVE, SO FIVE SAMPLES.

09:36AM 13 SO THIS IS HEAD-TO-HEAD COMPARISON. SO YOU BASICALLY HAVE
09:36AM 14 FIVE SAMPLES, YOU SPLIT THEM, RUN ONE HALF ON THE COMMERCIAL
09:36AM 15 DEVICE, AND ONE HALF ON THE THERANOS TECHNOLOGY AND SEE WHAT
09:37AM 16 HAPPENS, RIGHT.

09:37AM 17 AND THEN THE NEXT PAGE THERE'S CRITERIA FOR ACCEPTANCE.

09:37AM 18 AND YOU CAN SEE THAT IF AN ANALYTE FAILS GREATER THAN
09:37AM 19 20 PERCENT OF THE TIME, THAT'S 1 OUT OF 5, AND THEN THE
09:37AM 20 PROFICIENCY WILL BE DEEMED TO HAVE FAILED. YOU HAVE TO GET
09:37AM 21 ABOVE 80 BASICALLY. BELOW THAT IS A FAILURE. OKAY?

09:37AM 22 AND THIS IS A REFERENCE THAT YOU MIGHT REMEMBER FROM
09:37AM 23 TRIAL, THE CLSI, THAT'S THE CLINICAL LABORATORY STANDARDS
09:37AM 24 INSTITUTE. AND DR. ROSENDORFF TESTIFIED THIS WAS AN
09:37AM 25 AUTHORITATIVE GROUP FROM PENNSYLVANIA THAT PUT OUT GUIDANCE FOR

09:37AM 1 CLINICAL LABS. AND THAT WAS CITED IN DR. ROSENDORFF'S
09:37AM 2 PROTOCOL.

09:37AM 3 SO THEY'RE NOT MAKING THIS STUFF UP FROM SCRATCH. YOU
09:37AM 4 KNOW, THEY'RE RELYING ON SOURCES, AND THOSE WERE THE REFERENCES
09:37AM 5 IN DR. ROSENDORFF'S PROTOCOL.

09:38AM 6 OKAY. JUST TO QUICKLY SHOW YOU, THERE WAS A PRETTY MUCH
09:38AM 7 IDENTICAL PROCEDURE FOR THE MODIFIED PREDICATES, SO THAT IS
09:38AM 8 EXHIBIT 9940. AND I WON'T GO THROUGH THIS, BUT IT IS REALLY
09:38AM 9 THE SAME AS 9939 AND IT APPLIES TO THOSE MODIFIED PREDICATE
09:38AM 10 DEVICES, WHEREAS 9939 APPLIED TO THE EDISON TESTS.

09:38AM 11 AND YOU CAN SEE THAT ONE WAS SIGNED, AGAIN, THE SAME DATE
09:38AM 12 DR. ROSENDORFF APPROVED IT ON DECEMBER 2ND, 2013.

09:38AM 13 AND JUST ANOTHER WORD ABOUT THE CLINICAL LABORATORY
09:38AM 14 STANDARDS INSTITUTE. DR. ROSENDORFF TESTIFIED THAT THEY
09:38AM 15 PROVIDED GUIDANCE ON THE ALTERNATIVE ASSESSMENT PROCEDURE AND
09:38AM 16 THAT HE REVIEWED THAT TO HELP DEVISE THE PROTOCOL.

09:38AM 17 SO, AGAIN, HE'S NOT JUST, YOU KNOW, FLAILING AROUND IN THE
09:38AM 18 DARK. HE'S GOT GUIDANCE AND HE'S GOT STANDARDS AND HE'S USING
09:38AM 19 THOSE TO DEVELOP HIS PROTOCOL.

09:38AM 20 OKAY. WITH THAT BACKGROUND, WHAT THE GOVERNMENT HAS SHOWN
09:39AM 21 REPEATEDLY AT TRIAL, INCLUDING AT CLOSING -- AND GO TO THE NEXT
09:39AM 22 SLIDE -- IS THIS EMAIL FROM FEBRUARY OF 2014 AND IT'S FROM
09:39AM 23 ERIKA CHEUNG, SHE FORWARDS IT TO HER FRIEND TYLER SHULTZ.

09:39AM 24 BUT IF YOU GO TO THE NEXT PAGE, THIS IS THE RESULTS OF A
09:39AM 25 PARTICULAR EXPERIMENT WE'LL CALL IT WHERE SOME LEFTOVER

09:39AM 1 PROFICIENCY TESTING SAMPLES FROM NEW YORK STATE AND API WERE
09:39AM 2 RUN ON EDISON.

09:39AM 3 AND WE'LL SEE THIS IN A MINUTE, BUT DR. PANDORI TESTIFIED
09:39AM 4 THAT THEY DID THE STANDARD PROFICIENCY TESTING YOU HAVE TO DO
09:39AM 5 ON COMMERCIAL DEVICES, AND THEN THEY HAD SOME LEFTOVER SAMPLES,
09:39AM 6 SO DR. PANDORI, HE TESTIFIED, WITHOUT KNOWING OR REALIZING
09:39AM 7 THERE WAS A POLICY. I THINK HE JUST STARTED LIKE AROUND
09:39AM 8 DECEMBER OF 2013.

09:39AM 9 SO WITHOUT KNOWING THAT THERE WAS THIS PROTOCOL THAT
09:39AM 10 DR. ROSENDORFF PUT IN PLACE, THIS SOP, DR. PANDORI ARRANGED FOR
09:40AM 11 THESE LEFTOVER SAMPLES TO BE RUN ON THE EDISON DEVICE, WHICH
09:40AM 12 WAS TOTALLY AGAINST THE SOP. THERE WAS NO SOP FOR RUNNING
09:40AM 13 LEFTOVER SAMPLES FROM API OR NEW YORK STATE ON THE EDISON
09:40AM 14 DEVICE. BUT THAT'S WHAT THEY DID, RIGHT?

09:40AM 15 SO THE GOVERNMENT IS REALLY FOCUSSED ON THIS TPSA SECTION,
09:40AM 16 AND YOU CAN SEE THERE'S PURPORTEDLY A RERUN. SO THIS SAMPLE
09:40AM 17 267 AND THE RERUN VALUE IS 3.1, AND THEN THERE'S ANOTHER RERUN
09:40AM 18 FOR SAMPLE 268 AND IT LISTS IT AS 7.5.

09:40AM 19 SO THE GOVERNMENT'S POINT ON CLOSING WAS, WELL, BOY, ISN'T
09:40AM 20 THAT WONDERFUL? THE PREDICATE DEVICE, THE COMMERCIAL DEVICE
09:40AM 21 GOT 3.1 AND THEN A RERUN OF 3.1, AND THEN A 7.5 ON A DIFFERENT
09:40AM 22 SAMPLE AND THEN A RERUN OF 7.5. SO IT'S IDENTICAL. IT'S
09:40AM 23 AMAZING.

09:40AM 24 WELL, YOU HEARD AT TRIAL THAT THESE BLOOD TESTING SYSTEMS,
09:41AM 25 WHATEVER IT IS, GETTING IDENTICAL NUMBERS I GUESS IS

09:41AM 1 THEORETICALLY POSSIBLE, BUT THAT'S NOT WHAT -- THAT'S NOT THE
09:41AM 2 WORLD OF BLOOD TESTING. THERE ARE STANDARD DEVIATIONS. THEY
09:41AM 3 HAVE TO BE WITHIN CERTAIN PARAMETERS, 5 PERCENT, 10 PERCENT OR
09:41AM 4 EVEN 20 OR 30 PERCENT.

09:41AM 5 SO GETTING AN IDENTICAL VALUE WOULD BE VERY UNUSUAL BASED
09:41AM 6 ON THE TESTIMONY AT TRIAL.

09:41AM 7 BUT THOSE BOXES ARE HIGHLIGHTED. SO IT'S NOT EVEN CLEAR
09:41AM 8 THAT THEY WERE RERUN.

09:41AM 9 DR. PANDORI TESTIFIED THAT HE WAS NOT AWARE, DIDN'T
09:41AM 10 SUPERVISE IT PERSONALLY.

09:41AM 11 SO THERE'S A PRETTY GOOD CHANCE THAT THEY HAD A VALUE FROM
09:41AM 12 RUNNING THE SAMPLE ON A PREDICATE DEVICE AND THEY DIDN'T RUN IT
09:41AM 13 AGAIN, BUT THEY JUST PUT THAT IN SHADING AND THEN THEY RAN THE
09:41AM 14 THERANOS TEST AGAIN.

09:41AM 15 SO I DON'T EVEN KNOW IF THERE WERE, I DON'T THINK ANYONE
09:41AM 16 KNOWS WHETHER THERE IS A RERUN, BUT LET'S JUST ASSUME THAT
09:41AM 17 THERE WAS, OKAY.

09:41AM 18 THE PROBLEM IS MUCH DEEPER THAN THAT WITH THE GOVERNMENT'S
09:41AM 19 USE OF THIS CHART OR THIS DATA.

09:41AM 20 SO LET'S KIND OF GO THROUGH WHAT HAPPENED HERE.

09:42AM 21 DR. PANDORI, HE TESTIFIED THAT HE USED LEFTOVER PT
09:42AM 22 MATERIAL, AS I JUST SAID, AND IT WASN'T A PROCEDURE SET FORTH
09:42AM 23 IN THE SOP, REFLECTED IN THAT EXHIBIT 9939 THAT WE SAW A MINUTE
09:42AM 24 AGO.

09:42AM 25 HE SAYS I WOULD HAVE TO READ THE WHOLE PROCEDURE.

09:42AM 1 AND THE QUESTION WAS, AND YOU HADN'T DONE THAT AT THE
09:42AM 2 TIME; CORRECT?

09:42AM 3 ME? NO.

09:42AM 4 SO HE WENT FORWARD WITH THIS EXPERIMENT WITHOUT EVER
09:42AM 5 READING THE PROTOCOL OR KNOWING WHAT IT IS. THAT WAS HIS
09:42AM 6 TESTIMONY.

09:42AM 7 NOW, DR. ROSENDORFF, ON CROSS-EXAMINATION I ASKED HIM THE
09:42AM 8 FOLLOWING QUESTION: AND THE EXPERIMENT THAT WAS RUN WITH THOSE
09:42AM 9 SAMPLES, BECAUSE IT WASN'T IN THE PROTOCOL, WOULD YOU AGREE
09:42AM 10 WITH ME THAT THAT EXPERIMENT RUNNING EDISON -- RUNNING
09:42AM 11 PROFICIENCY TESTING SAMPLES FROM NEW YORK STATE AND API ON
09:42AM 12 EDISON, THE RESULTS CANNOT BE DEEMED A FAILURE OF PROFICIENCY
09:42AM 13 TESTING ON THE EDISON; CORRECT?

09:43AM 14 AND HE SAID NOT ACCORDING TO THE STANDARD OPERATING
09:43AM 15 PROCEDURE, NO.

09:43AM 16 SO THAT'S WHAT LABS DO. AND AS YOU HEARD, THERE'S
09:43AM 17 STANDARD OPERATING PROCEDURES. AND THAT'S -- YOU CAN CHANGE IT
09:43AM 18 IF YOU WANT TO IF THERE'S A REASON TO CHANGE IT, AS YOU HEARD.

09:43AM 19 BUT YOU HAVE TO FOLLOW THESE SOP'S. AND IT WAS NOT A
09:43AM 20 FAILURE BECAUSE IT WASN'T AUTHORIZED. THERE WAS A REASON,
09:43AM 21 WE'RE GOING TO SEE IN A MINUTE, WHY THERANOS DECIDED ON THIS
09:43AM 22 AAP METHOD RATHER THAN USING THESE PT SAMPLES FROM A SOURCE
09:43AM 23 LIKE API OR NEW YORK STATE.

09:43AM 24 SO WHAT HAPPENS?

09:43AM 25 SO BECAUSE OF THIS CONFUSION -- AND YOU MIGHT REMEMBER,

09:43AM 1 YOU KNOW, MS. CHEUNG, YOU KNOW, SHE MIGHT HAVE BEEN PRETTY
09:43AM 2 WORKED UP ABOUT THIS. I MEAN, SHE WAS AN ENTRY LEVEL PERSON,
09:43AM 3 AND IN FAIRNESS TO HER, SHE'S RAISING ISSUES, SHE TOOK THAT AS
09:43AM 4 A FAILURE. I MEAN, DR. ROSENDORFF DIDN'T THINK SO, BUT
09:43AM 5 MS. CHEUNG THOUGHT SO.

09:43AM 6 SO THERE'S A LOT OF DISCUSSION, INCLUDING WITH MS. CHEUNG,
09:44AM 7 ABOUT THIS ISSUE.

09:44AM 8 SO ULTIMATELY DR. PANDORI PUTS TOGETHER THIS POWERPOINT
09:44AM 9 PRESENTATION ABOUT THIS QUESTION OF AAP VERSUS PT, OKAY?

09:44AM 10 AND I THINK IT'S IMPORTANT TO LOOK AT IT.

09:44AM 11 SO THIS IS DR. PANDORI'S POWERPOINT. SO HE SAYS PT, AS I
09:44AM 12 EXPLAINED A FEW MINUTES AGO, YOUR LAB IS COMPARED TO PEER
09:44AM 13 GROUPS ON THE BASIS OF EQUIPMENT. THAT'S STANDARD PT.

09:44AM 14 AND THEN HE RECITES THAT THERANOS TESTS HAVE NO PEER
09:44AM 15 GROUPS BECAUSE IT'S GOT PROPRIETARY TECHNOLOGY.

09:44AM 16 AND THE NORMAL PROCESS OF PT IS THEREFORE NOT APPROPRIATE.

09:44AM 17 ADDITIONALLY, THE SYNTHETIC MATRIX OF MANY COMMERCIALY
09:44AM 18 AVAILABLE PT SAMPLES IS NOT AN APPROPRIATE ONE FOR MANY
09:44AM 19 THERANOS TESTS.

09:44AM 20 SO THAT'S DR. PANDORI'S WORDS.

09:44AM 21 AND THEN IT GOES ON.

09:44AM 22 HOW IS PT PERFORMED THEN ON THERANOS TESTS?

09:44AM 23 AND HE CITES THE SAME SOURCE, THE CLINICAL AND LABORATORY
09:45AM 24 STANDARDS INSTITUTE REFERS TO THE USE OF AN AAP, OR ALTERNATIVE
09:45AM 25 ASSESSMENT PROTOCOL, SO HE'S DRAWING FROM THAT SAME SOURCE FOR

09:45AM 1 GUIDANCE.

09:45AM 2 THIS IS AN ALTERNATIVE WAY TO ASSESS THE ONGOING
09:45AM 3 PERFORMANCE OF A LABORATORY TEST WHEN STANDARD PT IS
09:45AM 4 INAPPROPRIATE.

09:45AM 5 AND HE SAYS, PARTICULARLY IMPORTANT FOR LABORATORIES WHO
09:45AM 6 HAVE NO PEERS SUCH AS US, EXCLAMATION POINT.

09:45AM 7 AND THEN HE TALKS ABOUT OUR AAP, THERANOS'S AAP, INCLUDES
09:45AM 8 COMPARISON OF A PREDICATE, FDA APPROVED METHOD (FOR WHICH THERE
09:45AM 9 IS AN EXTERNAL ASSESSMENT AVAILABLE) TO THE THERANOS METHODS.

09:45AM 10 SO IN OTHER WORDS, THERANOS IS DOING STANDARD PEER GROUP
09:45AM 11 PT ON ITS PREDICATE METHODS AND THEN IT'S USING THOSE TO
09:45AM 12 COMPARE THE EDISON WITH THESE REAL BLOOD SAMPLES WITH THIS AAP
09:45AM 13 FEATURE, AND THAT'S WHAT DR. PANDORI IS SAYING HERE.

09:45AM 14 AND THEN HE SAYS, OUR AAP USES ACTUAL CLINICAL SPECIMENS,
09:46AM 15 5 OR MORE SPECIMENS ARE TESTED BY PREDICATE AND BY THE THERANOS
09:46AM 16 METHOD.

09:46AM 17 AND THEN HE GOES ON. INCLUDES MONTHLY OR GREATER
09:46AM 18 FREQUENCY PERFORMANCE.

09:46AM 19 HE GOES ON. THE THERANOS AAP IS SUPERIOR TO STANDARD PT
09:46AM 20 AND WILL PROVIDE EVEN MORE QUALITY ASSURANCE.

09:46AM 21 THAT'S WHAT PANDORI WROTE. THAT'S WHAT HE THOUGHT.

09:46AM 22 OKAY. SO WE KNOW MORE ABOUT AAP AT THERANOS. HERE'S AN
09:46AM 23 EXAMPLE OF DR. ROSENDORFF USING AAP.

09:46AM 24 SO THIS IS AN ISSUE THAT CAME UP PRETTY LATE IN
09:46AM 25 DR. ROSENDORFF'S TIME AT THERANOS, IN OCTOBER OF 2014, AND HE

09:46AM 1 SENDS AN EMAIL ON OCTOBER 17TH, 2014, TO ANAM KHAN, AND IT'S
09:46AM 2 ABOUT A PHYSICIAN INQUIRY FROM A DR. KRAL.

09:46AM 3 AND HE SAYS IN THE HIGHLIGHTED SECTION, "THE M.D. IS
09:46AM 4 EXTREMELY POSITIVE AND EXCITED ABOUT THERANOS AND WANTS US TO
09:47AM 5 'CRUSH QUEST DIAGNOSTICS, '" A COMPETITOR YOU HAVE HEARD ABOUT.

09:47AM 6 AND DR. ROSENDORFF WRITES, "NOTE: AAP PERFORMED ON
09:47AM 7 4/18/2014 INDICATES THAT THE THERANOS METHOD IS, ON AVERAGE,
09:47AM 8 10 PERCENT LOWER THAN THE PREDICATE, WHICH IS ACCEPTABLE."

09:47AM 9 SO THAT'S DR. ROSENDORFF'S VIEW AND HE WAS CLEARLY ABLE TO
09:47AM 10 REFER TO THE AAP THAT WAS DONE TO LOOK AT THIS PARTICULAR
09:47AM 11 ASSAY, IN THIS CASE I THINK IT'S FT4, AND USE THAT AS AN AID TO
09:47AM 12 ANSWER A PHYSICIAN INQUIRY.

09:47AM 13 AND SO THE AAP IS GOING ON, AND WE'LL SEE MORE ABOUT THAT.

09:47AM 14 AND THAT'S THE METHOD THAT DR. PANDORI AND DR. ROSENDORFF
09:47AM 15 PUT IN PLACE, NOT THE CHART THE GOVERNMENT SHOWED YOU WHERE
09:47AM 16 IT'S AGAINST THE SOP, IT'S NOT A FAILURE, IT'S RUNNING PT
09:47AM 17 SAMPLES WHICH DR. PANDORI SAID IS NOT APPROPRIATE BECAUSE THERE
09:47AM 18 WERE SCIENTIFIC REASONS TO NOT DO THAT.

09:47AM 19 SO THAT CHART THAT THE GOVERNMENT SHOWED YOU WITH THE PT
09:47AM 20 EXPERIMENT WITH NEW YORK STATE AND API, THAT IS MEANINGLESS IN
09:47AM 21 THIS CASE.

09:47AM 22 BUT, AGAIN, THIS IS ANOTHER THING THAT WE HAD TO SHOW YOU,
09:48AM 23 BECAUSE THE GOVERNMENT SHOWED YOU A CHART AND RELIED ON DATA
09:48AM 24 THAT IS JUST NOT APPROPRIATE TO RELY ON, AND THIS IS BASICALLY
09:48AM 25 A SCIENTIFIC FRAUD CASE, RIGHT?

09:48AM 1 IF WE CAN GO, MR. ALLEN, TO SLIDE 110.

09:48AM 2 I JUST WANT TO COVER THIS TEXT MESSAGE STRING JUST FOR A
09:48AM 3 MOMENT.

09:48AM 4 SO FAR THE GOVERNMENT HAS REPEATEDLY SHOWED THIS FIRST
09:48AM 5 TEXT MESSAGE FROM SUNNY BALWANI TO ELIZABETH HOLMES ON
09:48AM 6 NOVEMBER 28TH, 2014. AND IT SAYS "NORMANDY IS A," AND I WON'T
09:48AM 7 USE THE WORD HERE IN COURT, "DISASTER ZONE. GLAD I CAME HERE.
09:48AM 8 WILL WORK ON FIXING THIS."

09:48AM 9 SO THIS IS MR. BALWANI TEXTING IT LOOKS LIKE AT
09:48AM 10 11:12 P.M., LATE IN THE EVENING.

09:49AM 11 BUT IT GOES ON, RIGHT?

09:49AM 12 AND THE GOVERNMENT DOESN'T KNOW WHAT WAS REALLY GOING ON
09:49AM 13 HERE. AND PEOPLE LATE AT NIGHT USE ALL KINDS OF WORDS.
09:49AM 14 THEY'RE FRUSTRATED WITH SOMETHING, THEY VENT.

09:49AM 15 BUT WE DO HAVE SOME INSIGHT INTO WHAT THIS WAS REALLY
09:49AM 16 ABOUT. AND THE GOVERNMENT WOULD HAVE YOU BELIEVE THAT THIS IS
09:49AM 17 BASICALLY MR. BALWANI OPINING ABOUT THE ENTIRE LAB, LIKE I GOT
09:49AM 18 HERE LATE AT NIGHT ON NOVEMBER 28TH, AND I'VE DETERMINED THAT
09:49AM 19 THE LAB IS A DISASTER, MEANING LIKE ALL OF THE TESTS ARE
09:49AM 20 INVALID.

09:49AM 21 THAT'S NOT EVEN POSSIBLE. MR. BALWANI IS NOT A LAB
09:49AM 22 SCIENTIST. HE'S NOT QUALIFIED TO GO TO A LAB AND SPEND SOME
09:49AM 23 TIME THERE AND LATE IN THE EVENING SAY I HAVE DETERMINED IT'S
09:49AM 24 NOT FOUND.

09:49AM 25 HE'S GOT A SCIENTIFIC TEAM THAT YOU'VE SEEN REPEATEDLY

09:49AM 1 THAT WHEN THERE'S AN ISSUE, THEY'RE THE PEOPLE WHO HELP
09:49AM 2 DETERMINE WHETHER SOMETHING IS RIGHT OR NOT RIGHT.

09:49AM 3 AND SO MR. BALWANI HAS NO ABILITY TO BASICALLY OPINE ON
09:49AM 4 THE ENTIRE LAB.

09:49AM 5 SO WHAT IS REALLY GOING ON HERE? AGAIN, WE HAVE SOME
09:50AM 6 INSIGHT INTO THIS.

09:50AM 7 SO LATER IN THIS HE SAYS AT 11:32, "I WILL GET TINA OUT.
09:50AM 8 WE NEED A SOFTWARE PERSON RUNNING THIS. BETWEEN TINA AND MAX
09:50AM 9 WE HAVE A MESS."

09:50AM 10 SO THIS IS THE MESS THAT MR. BALWANI IS APPARENTLY
09:50AM 11 REFERRING TO.

09:50AM 12 TINA AND MAX ARE PROJECT MANAGERS. THEY'RE NOT LAB
09:50AM 13 SCIENTISTS. SO THE MESS SEEMS TO BE WITH SOMETHING OTHER THAN
09:50AM 14 THE LAB SCIENTISTS.

09:50AM 15 AND THEN HE GOES ON TO SAY, "WE BUILT SOFTWARE TO REMOVE
09:50AM 16 HUMAN ERROR AND HUMAN JUDGMENT. ALL DAY I SAW THESE PEOPLE USE
09:50AM 17 THEIR JUDGMENTS TO WORK AROUND OUR PROCESSES."

09:50AM 18 AND THEN HE SAYS, "THIS IS WHERE OUR PROBLEMS ARE. WHICH
09:50AM 19 MEANS WE CAN FIX IT. THANK GOD." THAT'S WHAT ELIZABETH HOLMES
09:50AM 20 SAYS.

09:50AM 21 SO THIS HAS TO DO WITH PROCEDURES THAT ARE IN PLACE THAT
09:50AM 22 ARE APPARENTLY NOT BEING FOLLOWED, TWO PROJECT MANAGERS. HE'S
09:50AM 23 NOT SAYING I'VE TALKED TO THE LAB STAFF LIKE DR. SAKSENA OR
09:50AM 24 DR. PANGARKAR, PEOPLE LIKE THAT, AND THEY'RE TELLING ME THINGS
09:50AM 25 ARE A DISASTER.

09:50AM 1 SO THIS IS REALLY -- I MEAN, I UNDERSTAND WHY THE
09:51AM 2 GOVERNMENT LIKES THE TEXT MESSAGE BECAUSE THE FIRST ONE LOOKS
09:51AM 3 BAD. BUT WHEN YOU THINK ABOUT IT, IT REALLY DOESN'T MAKE SENSE
09:51AM 4 THAT MR. BALWANI IS SAYING, YEAH, I PERSONALLY HAVE COME HERE
09:51AM 5 AND DETERMINED ON MY OWN THAT THE LAB IS A DISASTER ZONE, AND
09:51AM 6 THAT MEANS SOMEHOW ALL OF THE TESTING IS BAD, THROWING ASIDE
09:51AM 7 ALL OF THE OTHER VALIDATION REPORTS AND AAP THAT IS BEING DONE
09:51AM 8 AND EVERYTHING ELSE.

09:51AM 9 SO WE'LL TALK ABOUT THAT MORE, BUT THAT'S THE TEXT
09:51AM 10 MESSAGE. I JUST WANTED TO ADDRESS THAT.

09:51AM 11 OKAY. THIS LEADS US TO DR. MARK PANDORI.

09:51AM 12 SO DR. PANDORI WAS INTERESTING. HE HAD A WAY, YOU MIGHT
09:51AM 13 REMEMBER, DURING THE TRIAL OF TURNING TO YOU, THE JURY, AND
09:51AM 14 EXPLAINING IT LIKE HE WAS A PROFESSOR EXPLAINING THINGS. AND
09:51AM 15 HE DID VERY WELL WITH THAT ON DIRECT LIKE PRESENTING LIKE HE
09:51AM 16 WAS IN A CLASS OR SOMETHING.

09:51AM 17 AND HE WAS VERY MUCH AT EASE WITH THE GOVERNMENT'S DIRECT
09:51AM 18 EXAMINATION. HE REMEMBERED ALL 19 EMAILS THAT THEY SHOWED HIM,
09:51AM 19 NO PROBLEM, HAD SOMETHING TO SAY TO EXPLAIN TO YOU.

09:52AM 20 AND THEN ALL OF A SUDDEN ON CROSS EVERYTHING CHANGED AND
09:52AM 21 HE HAD MEMORY ISSUES, MAJOR MEMORY ISSUES WITH 13 EMAILS WE
09:52AM 22 SHOWED HIM ON CROSS. ALL OF A SUDDEN HE HAD A FAILURE OF
09:52AM 23 MEMORY AND COULDN'T REMEMBER THINGS. AND I WANT TO GO THROUGH
09:52AM 24 THOSE THINGS ABOUT DR. PANDORI.

09:52AM 25 SO THE FIRST ISSUE HERE IS ABOUT A CONVERSATION HE CLAIMS

09:52AM 1 TO HAVE HAD WITH MR. BALWANI AND MS. HOLMES ABOUT READING AN
09:52AM 2 ARTICLE IN THE PRESS, OKAY?

09:52AM 3 SO WHAT -- EXCUSE ME.

09:52AM 4 SO WHAT DR. PANDORI SAYS WAS THAT HE SAW THIS ARTICLE IN
09:52AM 5 "WIRED" MAGAZINE, AND HE REMEMBERS IT WAS RIGHT AROUND HIS
09:52AM 6 BIRTHDAY, HE SAID MAY 19TH, 2014, THAT WAS HIS BIRTHDAY, AND IT
09:52AM 7 WAS WITHIN A DAY OR TWO OF MAY 19TH. THAT'S WHAT HE SAID. AND
09:52AM 8 THAT'S HIS TESTIMONY, RIGHT?

09:53AM 9 SO IS HE REMEMBERS THAT HE SAYS.

09:53AM 10 AND THEN THERE'S THIS "WIRED" ARTICLE, THAT'S THE
09:53AM 11 CATALYST, HIS WORDS, THAT HE HAD TO GO IN AND SEE MR. BALWANI
09:53AM 12 AND MS. HOLMES AND SAY, HEY, THERE ARE THINGS IN THE PRESS, IN
09:53AM 13 THIS CASE A "WIRED" ARTICLE, THAT AREN'T ACCURATE, SO YOU'VE
09:53AM 14 GOT TO INVOLVE THE SCIENTIFIC TEAM HERE, YOU KNOW, TO MAKE SURE
09:53AM 15 THAT THE PRESS IS GETTING ACCURATE INFORMATION.

09:53AM 16 AND HE CLAIMS THAT MR. BALWANI SAYS, THAT'S NEVER GOING TO
09:53AM 17 HAPPEN.

09:53AM 18 AND THEN MR. -- OR DR. PANDORI SAYS HE QUIT FIVE MINUTES
09:53AM 19 LATER. SO LET'S LOOK AT THAT.

09:53AM 20 HE SAID HE HAD THIS MEETING. WHAT WAS THE OUTCOME OF THE
09:53AM 21 MEETING?

09:53AM 22 AND HE SAYS -- WHEN DID YOU QUIT THE COMPANY?

09:53AM 23 DR. PANDORI SAYS FIVE MINUTES LATER.

09:53AM 24 SO BASICALLY THE IMPRESSION THAT HE'S TRYING TO GIVE
09:53AM 25 EVERYONE WAS THAT THE COMPANY WOULDN'T LISTEN TO ME ABOUT

09:53AM 1 ACCURACY AND MEDIA ARTICLES, AND I WAS OUT THE DOOR. FIVE
09:54AM 2 MINUTES, RIGHT?

09:54AM 3 HERE'S THE PROBLEM WITH DR. PANDORI. IT'S JUST NOT TRUE,
09:54AM 4 RIGHT?

09:54AM 5 SO FIRST OF ALL, THE SO-CALLED CATALYST FOR THE MAY 19TH
09:54AM 6 CONFRONTATION WITH MS. HOLMES AND MR. BALWANI ABOUT THIS ISSUE,
09:54AM 7 THE "WIRED" ARTICLE IS SENT TO HIM THREE MONTHS EARLIER, A
09:54AM 8 LITTLE UNDER THREE MONTHS EARLIER, IN FEBRUARY OF 2014.

09:54AM 9 SO HE'S GOT THIS ARTICLE. HE'S DOING ALL KINDS OF THINGS
09:54AM 10 BETWEEN FEBRUARY AND MAY. SO IT'S NOT THE CATALYST FOR A
09:54AM 11 MEETING, OKAY?

09:54AM 12 SO THAT'S THE ARTICLE THAT IS SENT TO DR. PANDORI ON
09:54AM 13 FEBRUARY 27TH OF 2014.

09:54AM 14 OKAY. SO THEN HE'S ASKED A QUESTION ABOUT THAT ON
09:54AM 15 REDIRECT EXAMINATION. "AND DO YOU KNOW WHETHER THAT LINK WAS
09:54AM 16 TO THE ACTUAL ARTICLE THAT WE HAVE BEEN TALKING ABOUT?"

09:54AM 17 SO LIKE A LIFELINE, DR. PANDORI SAYS "NO, I DON'T KNOW THE
09:54AM 18 ANSWER TO THE QUESTION," HOPING MAYBE IT'S A DIFFERENT ARTICLE,
09:55AM 19 RIGHT, SO MY STORY COULD STILL HOLD TOGETHER.

09:55AM 20 THE PROBLEM IS THAT'S NOT TRUE EITHER.

09:55AM 21 IT IS THE SAME ARTICLE. AND THE COURT READ YOU THE
09:55AM 22 STIPULATION DURING TRIAL AFTER DR. PANDORI'S TESTIMONY. THE
09:55AM 23 "WIRED" MAGAZINE ARTICLE INCLUDED AS A LINK IN THE EXHIBIT THAT
09:55AM 24 I JUST SHOWED YOU FROM FEBRUARY AND DISCUSSED DURING
09:55AM 25 DR. PANDORI'S TESTIMONY WAS PUBLISHED BY "WIRED" MAGAZINE

09:55AM 1 ONLINE ON FEBRUARY 18TH, 2014. SO THERE'S AN ONLINE VERSION OF
09:55AM 2 IT THAT WAS SENT TO DR. PANDORI. SO IT IS THE SAME ARTICLE.
09:55AM 3 SO THIS WAS NOT THE CATALYST FOR A MEETING. IT DOESN'T
09:55AM 4 MAKE ANY SENSE.
09:55AM 5 OKAY. BUT WITH DR. PANDORI IT GETS MUCH WORSE, OKAY?
09:55AM 6 SO LET'S LOOK AT THE NEXT SLIDE.
09:55AM 7 QUESTION TO HIM ON DIRECT: "DID YOU EVER DISCUSS OR WERE
09:55AM 8 YOU EVER IN A CONVERSATION WITH MR. BALWANI ABOUT THE
09:55AM 9 RECOMMENDATION THAT YOU HAD MADE TO STOP USING THE EDISONS?"
09:55AM 10 HE SAID, "YES."
09:55AM 11 SO THE GOVERNMENT TALKED ABOUT THIS A LITTLE BIT IN THEIR
09:56AM 12 CLOSING YESTERDAY.
09:56AM 13 DR. PANDORI CLAIMS THAT HE MADE A RECOMMENDATION TO
09:56AM 14 MR. BALWANI THAT THEY SHOULD JUST STOP USING THE EDISON DEVICE,
09:56AM 15 IT WASN'T A DEVICE THAT SHOULD BE USED FOR PATIENT TESTING,
09:56AM 16 THEY SHOULD DO MORE WORK WITH IT, BUT IT SHOULD NOT BE USED.
09:56AM 17 THEY SHOULD JUST STOP, RIGHT? THAT'S WHAT DR. PANDORI CLAIMED.
09:56AM 18 AND BY THE WAY, THAT CLAIM THAT DR. PANDORI MADE, THERE'S
09:56AM 19 NOT A SINGLE EMAIL, NOTE, DOCUMENT OF ANY SORT THAT SUPPORTS
09:56AM 20 THAT CLAIM. HE JUST SAID THAT FROM HIS SUPPOSED MEMORY, BUT
09:56AM 21 THAT'S WHAT HE SAYS.
09:56AM 22 AND HE FURTHER TESTIFIED THAT AFTER THAT DISCUSSION WITH
09:56AM 23 MR. BALWANI, THAT MR. BALWANI VISITED DR. PANDORI IN HIS OFFICE
09:56AM 24 WITH TWO PROJECT MANAGERS AND TOLD HIM THAT'S NOT GOING TO
09:56AM 25 HAPPEN. THAT'S DR. PANDORI'S CLAIM, OKAY?

09:56AM 1 SO, AGAIN, NO NOTES, NO EMAILS, NOTHING THAT SUPPORTS THAT
09:56AM 2 OTHER THAN DR. PANDORI'S STORY.

09:56AM 3 BUT THAT'S WHAT HE SAYS, STOP USING EDISON. AND HE TOLD
09:57AM 4 THIS TO BALWANI, AND BALWANI SAID NOT GOING TO HAPPEN, RIGHT?

09:57AM 5 OKAY. WELL, WHAT ACTUALLY HAPPENED HERE?
09:57AM 6 THE TRANSITION MEMO.

09:57AM 7 SO MONA RAMAMURTHY, WHO IS THE HEAD OF HUMAN RESOURCES AND
09:57AM 8 EMPLOYMENT COUNSEL AT THERANOS, SENDS AN EMAIL TO DR. PANDORI
09:57AM 9 ON MAY 27TH, 2014.

09:57AM 10 AND MIND YOU, DO YOU REMEMBER DR. PANDORI SAID HE QUIT,
09:57AM 11 YOU KNOW, FIVE MINUTES AFTER THAT DISCUSSION ON MAY 19TH OR IT
09:57AM 12 COULD HAVE BEEN A DAY OR SO OF MAY 19TH, SO MAYBE IT'S
09:57AM 13 MAY 20TH, BUT AROUND MAY 19TH, DR. PANDORI SAYS I QUIT, FIVE
09:57AM 14 MINUTES.

09:57AM 15 THIS IS SEVEN DAYS LATER AND HE'S STILL THERE. OKAY? SO
09:57AM 16 THAT'S ANOTHER UNTRUE STATEMENT BY DR. PANDORI.

09:57AM 17 SO MS. RAMAMURTHY SAYS, "HI MARK,
09:57AM 18 "SUNNY IS OUT TODAY SO HE WANTED ME TO CONNECT WITH YOU ON
09:58AM 19 TRANSITION."

09:58AM 20 AND IT GOES ON, WANTS DR. PANDORI TO FOCUS ON DOCUMENTING
09:58AM 21 THE FOLLOWING, AND IT HAS A LIST OF THINGS THAT DR. PANDORI
09:58AM 22 SHOULD DO AS A TRANSITION BECAUSE HE'S GOING TO BE LEAVING
09:58AM 23 THERANOS.

09:58AM 24 AND THE LAST ONE, WHICH IS HIGHLIGHTED THERE, SAYS
09:58AM 25 "ANYTHING ELSE THAT YOU BELIEVE NEEDS TO BE DOCUMENTED FOR

09:58AM 1 EFFECTIVE TRANSITION PURPOSES."

09:58AM 2 SO DR. PANDORI IS GIVEN A COMPLETELY OPEN MIKE TO SAY
09:58AM 3 WHATEVER HE WANTS ABOUT THERANOS, ANYTHING HE NEEDS TO BE
09:58AM 4 DOCUMENTED, WHICH BY THE WAY THIS ISSUE ABOUT HIS CLAIM ABOUT
09:58AM 5 THE EDISON, THAT HE TOLD SUNNY TO STOP USING THE EDISON, THAT'S
09:58AM 6 NOT DOCUMENTED, RIGHT? SO THIS IS HIS OPPORTUNITY, RIGHT?

09:58AM 7 SO WHAT HAPPENS?

09:58AM 8 HERE'S THE TRANSITION MEMO. THREE DAYS LATER ON MAY 30TH,
09:58AM 9 HE'S STILL THERE, HE SENDS MS. RAMAMURTHY, WITH A COPY TO
09:59AM 10 MR. BALWANI, THE TRANSITION MEMO. YOU CAN SEE THE ATTACHMENT
09:59AM 11 THERE, TRANSITION MWP 05 2014.DOCX.

09:59AM 12 AND THEN HE WRITES "ATTACHED,

09:59AM 13 "A DOCUMENT DETAILING THE STATE OF VARIOUS PROJECTS OR
09:59AM 14 WORKS IN THE CLIA/BUGS LABORATORIES. IT CONTAINS ADDITIONAL
09:59AM 15 TRANSITIONAL INFORMATION DETAILING THE ADMINISTRATIVE FUNCTIONS
09:59AM 16 WHICH I HAVE BEEN PERFORMING AS NEW EMPLOYEES ARRIVE AND ON A
09:59AM 17 DAILY BASIS.

09:59AM 18 "I WAS GOING TO SHARE THIS WITH ADAM," THAT'S
09:59AM 19 DR. ROSENDORFF, "WITH YOUR PERMISSION."

09:59AM 20 SO THIS IS HIS EMAIL TO MS. RAMAMURTHY.

09:59AM 21 AND THEN LET'S LOOK AT THE CONTENT. YOU CAN SEE THIS IS
09:59AM 22 MAY 29TH, 30, SO IT'S 2014, IT'S M.W. PANDORI, THAT'S HIS NAME.

09:59AM 23 AND THEN YOU CAN SEE, IF YOU GO TO THE NEXT SLIDE, HERE'S
09:59AM 24 HIS OTHER NOTES. SO HERE'S THE OTHER SECTION WHERE HE'S
09:59AM 25 ADDRESSING ANYTHING ELSE THAT NEEDS TO BE DOCUMENTED.

10:00AM 1 AND WHAT DOES HE WRITE? "EDISONS: THE PRIMARY CONCERN IN
10:00AM 2 THIS SECTION IS THE AVAILABLE NUMBER OF DEVICES. FOR FT4,
10:00AM 3 VITAMIN D, AND TSH, AT LEAST THE DOUBLING OF THE NUMBER OF
10:00AM 4 UNITS IS NECESSARY, IN MY OPINION."

10:00AM 5 SO THIS GUY, DR. PANDORI, WHO SAYS, I TOLD HIM TO STOP
10:00AM 6 USING EDISON, HE SAYS IN HIS TRANSITION MEMO WHERE HE CAN SAY
10:00AM 7 ANYTHING HE WANTS, HE SAYS THE PRIMARY CONCERN ABOUT EDISONS IS
10:00AM 8 WE DON'T HAVE ENOUGH. WE NEED TO MAKE MORE.

10:00AM 9 SO WHAT DOES DR. PANDORI DO NEXT? HE SENDS THE MEMO TO
10:00AM 10 DR. ROSENDORFF ON MAY 30TH, 2014. THERE'S THE MEMO THAT
10:00AM 11 DR. PANDORI SENDS TO DR. ROSENDORFF WITH THE SAME NOTE ABOUT
10:00AM 12 NEEDING TO DOUBLE THE NUMBER OF EDISONS.

10:00AM 13 SO WHAT HAPPENED WHEN DR. PANDORI WAS CONFRONTED WITH THIS
10:01AM 14 ISSUE? HE'S ASKED ON CROSS-EXAMINATION, "AND THIS IS A MEMO
10:01AM 15 YOU DRAFTED?

10:01AM 16 HE SAYS, "NO, I DON'T RECALL THIS.

10:01AM 17 "YOU SENT THE MEMO TO DR. ROSENDORFF?"

10:01AM 18 HE'S PANICKED. HE'S NOW CONFRONTED WITH A DOCUMENT THAT
10:01AM 19 IS COMPLETELY INCONSISTENT WITH HIS STORY, AND HE'S CLAIMING
10:01AM 20 THAT HE DIDN'T EVEN WRITE HIS OWN TRANSITION MEMO THAT HE SENT
10:01AM 21 NOT ONLY TO MS. RAMAMURTHY AND MR. BALWANI, BUT ALSO TO
10:01AM 22 DR. ROSENDORFF.

10:01AM 23 SO THAT'S DR. PANDORI. HE'S NOW CAUGHT IN A LIE, AND HE'S
10:01AM 24 PANICKED, OKAY?

10:01AM 25 NOW, HE KEEPS ON GOING.

10:01AM 1 HE'S ASKED: OKAY. AND THE REPORT IS REFLECTING ISSUES IN
10:01AM 2 THE BUGS LAB?

10:01AM 3 "I DON'T KNOW. I'VE NEVER SEEN THIS REPORT BEFORE."

10:01AM 4 THIS IS HIS OWN TRANSITION MEMO THAT HE WROTE AND HE SAYS
10:01AM 5 HE'S NEVER SEEN IT BEFORE.

10:01AM 6 AND HE'S ASKED, "AND YOU SENT A TRANSITION REPORT TO
10:01AM 7 DR. ROSENDORFF ON MAY 30TH, 2014, AS REFLECTED ON
10:02AM 8 EXHIBIT 20281; CORRECT?

10:02AM 9 "NO, I DON'T RECALL DOING SO."

10:02AM 10 REMEMBER, HE HAD NO SUCH MEMORY PROBLEMS WHEN THE
10:02AM 11 GOVERNMENT WAS ASKING QUESTIONS.

10:02AM 12 HE GOES ON. AND IT'S YOUR SWORN TESTIMONY TODAY THAT YOU
10:02AM 13 DID NOT WRITE THE ATTACHMENT TO DR. ROSENDORFF REFLECTED IN
10:02AM 14 EXHIBIT 20279; IS THAT YOUR TESTIMONY?

10:02AM 15 HE SAYS, "I DON'T -- I HAVE TO REVIEW THIS DOCUMENT. I
10:02AM 16 DON'T RECALL AUTHORIZING IT."

10:02AM 17 OKAY. SO HE'S STILL IN PANIC MODE.

10:02AM 18 AND THEN ON THE NEXT DAY OF CROSS, APRIL 6TH, HE SAYS --
10:02AM 19 THE QUESTION IS, "AND YOU STILL DON'T RECALL AUTHORIZING THE
10:02AM 20 DOCUMENT? IS THAT YOUR TESTIMONY?

10:02AM 21 HE SAYS, "I DON'T RECALL."

10:02AM 22 SO THE GOVERNMENT TRIED TO CLAIM, WELL, MAYBE HE DIDN'T
10:02AM 23 PUT EVERYTHING DOWN IN THE TRANSITION MEMO SO MAYBE WE CAN GIVE
10:02AM 24 HIM A PASS.

10:02AM 25 ACTUALLY, THAT TRANSITION MEMO IS NOT THE ONLY TIME THAT

10:02AM 1 HE MADE THE SAME POINT.

10:03AM 2 LET'S LOOK AT EXHIBIT 20490, WHICH IS A MAY 20TH, 2014

10:03AM 3 EMAIL. THIS IS DR. PANDORI ON MAY 20TH, AND THIS IS THE DAY

10:03AM 4 AFTER HE HAS THE SUPPOSED MEETING WHERE HE SUPPOSEDLY QUIT.

10:03AM 5 HE WRITES, "HI, CHINMAY, NISHIT," THAT'S DR. PANGARKAR AND
10:03AM 6 MR. DOSHI.

10:03AM 7 "THERE REMAINS AN ISSUE IN NORMANDY WITH THE NUMBER OF
10:03AM 8 EDISON READERS AVAILABLE FOR PATIENT TESTING. WE WILL SURELY
10:03AM 9 NEED MORE READERS FOR THE FOLLOWING REASONS:

10:03AM 10 "THE NUMBER OF EDISONS TESTS IS ALREADY CHALLENGING THE
10:03AM 11 NUMBER WE HAVE;

10:03AM 12 "MORE STORES ARE OPENING THIS WEEK (WE CANNOT ESTIMATE HOW
10:03AM 13 MANY MORE SPECIMENS WILL BE COMING IN AS A RESULT) ."

10:03AM 14 AND THEN HE GOES ON, "I'D LIKE TO DISCUSS A PLAN TO DOUBLE
10:03AM 15 THE NUMBER OF READERS FOR THREE MAIN TESTS. THIS WILL BE
10:03AM 16 NECESSARY AS MORE STORES WILL BE OPENING IN JUNE AND WE STILL
10:04AM 17 DON'T KNOW THE IMPACT OF OPENINGS IN MAY."

10:04AM 18 SO HE'S SAYING THERE ARE GOING TO BE MORE STORES, THERE
10:04AM 19 ARE GOING TO BE MORE PATIENTS, THERE ARE GOING TO BE MORE
10:04AM 20 SAMPLES, AND WE ARE GOING TO NEED MORE OF THE EDISONS TO DO THE
10:04AM 21 TESTS. AND THIS IS ON MAY 20TH.

10:04AM 22 SO, AGAIN, DR. PANDORI COMPLETELY INCONSISTENT WITH HIS
10:04AM 23 CLAIM THAT HE SAID STOP USING EDISONS. HE'S ACTUALLY SAYING --
10:04AM 24 THE ONLY DOCUMENTED THING THAT DR. PANDORI SAYS IS MAKE MORE
10:04AM 25 EDISONS BECAUSE WE NEED TO USE THEM FOR PATIENT TESTING.

10:04AM 1 AND THEN THAT'S NOT ALL. THEN ON -- A COUPLE DAYS LATER,
10:04AM 2 OR THE NEXT DAY RATHER, ON MAY 21ST, 2014, HE SENDS ANOTHER
10:04AM 3 EMAIL. THIS TIME HE SENDS IT TO MR. BALWANI AND A GROUP OF
10:04AM 4 PEOPLE, INCLUDING DR. ROSENDORFF AND DR. YOUNG.

10:04AM 5 HE SAYS -- THIS IS NOW TWO DAYS AFTER THE SUPPOSED MEETING
10:04AM 6 WHERE HE SUPPOSEDLY QUIT.

10:04AM 7 HE SAYS, "RELATEDLY I HAVE ON TWO OCCASIONS IN THE LAST
10:04AM 8 2 WEEKS REQUESTED MORE EDISON READERS TO BE MADE AVAILABLE IN
10:04AM 9 NORMANDY.

10:04AM 10 "TESTING VOLUMES ARE GOING UP AND HAVING ONLY 2 TO 3
10:05AM 11 READERS PER TEST CAUSES SPECIMENS TO BACK UP AND FOR THE
10:05AM 12 WORKFLOW TO GAIN COMPLEXITY. I AM TOLD THAT MORE READERS ARE
10:05AM 13 ON THEIR WAY, AT LEAST FOR THE MOST COMMON TESTS."

10:05AM 14 SO REPEATEDLY DR. PANDORI IS SAYING WE NEED MORE EDISONS.

10:05AM 15 JUDGE DAVILA WILL INSTRUCT YOU AFTER WE'RE DONE WITH OUR
10:05AM 16 CLOSING AND THE GOVERNMENT IS DONE WITH THE REBUTTAL ABOUT THE
10:05AM 17 LAW THAT YOU SHOULD APPLY, AND THIS ONE IS ABOUT THE
10:05AM 18 CREDIBILITY OF WITNESSES. "IN DECIDING THE FACTS IN THIS CASE,
10:05AM 19 YOU MAY HAVE TO DECIDE WHICH TESTIMONY TO BELIEVE AND WHICH
10:05AM 20 TESTIMONY NOT TO BELIEVE. YOU MAY BELIEVE EVERYTHING A WITNESS
10:05AM 21 SAYS, OR PART OF IT, OR NONE OF IT."

10:05AM 22 IN THE CASE OF DR. PANDORI, YOU CANNOT BELIEVE A WORD THIS
10:05AM 23 MAN SAYS. HE'S REPEATEDLY LIED ON THE STAND, AND IN PARTICULAR
10:05AM 24 ABOUT THIS ISSUE OF THE CLAIM ABOUT MR. BALWANI BEING TOLD WE
10:05AM 25 SHOULDN'T BE USING EDISONS.

10:05AM 1 AND WHEN YOU LOOK AT THOSE EMAILS, INCLUDING THE LAST ONE
10:06AM 2 THAT WE SAW TO MR. BALWANI, "WE NEED MORE EDISONS," WHAT IS
10:06AM 3 MR. BALWANI SUPPOSED TO THINK WITH HIS CO-LAB DIRECTOR,
10:06AM 4 DR. PANDORI, WITH A COPY TO TWO OTHER LEAD SCIENTISTS,
10:06AM 5 DR. ROSENDORFF AND DR. YOUNG, AND DR. PANDORI SAYING MAKE MORE
10:06AM 6 EDISONS SO WE CAN USE THEM FOR PATIENT TESTING.

10:06AM 7 IS MR. BALWANI SUPPOSED TO THINK, OH, WE'VE GOT A PROBLEM
10:06AM 8 WITH EDISONS?

10:06AM 9 OBVIOUSLY THE REASONABLE THING FOR MR. BALWANI TO THINK AT
10:06AM 10 THAT POINT IS THE OPPOSITE OF THAT, IT LOOKS LIKE THE
10:06AM 11 SCIENTIFIC TEAM IS ON TOP OF THIS.

10:06AM 12 BUT, AGAIN, DR. PANDORI IS NOT SOMEONE WHOSE TESTIMONY YOU
10:06AM 13 CAN TRUST.

10:06AM 14 WHY, AGAIN, WOULD DR. PANDORI DO THAT? WHY WOULD HE CLAIM
10:06AM 15 NOT TO HAVE WRITTEN A DOCUMENT THAT HE WROTE? I THINK YOU
10:06AM 16 REMEMBER, HE SAYS, WELL, HE'S STILL IN THE LAB INDUSTRY, HE
10:06AM 17 TALKED ABOUT THAT. HE SAID HE WAS AT A PUBLIC HEALTH
10:06AM 18 LABORATORY IN NEVADA SOMEWHERE.

10:06AM 19 AND AGAIN, HE DOESN'T WANT TO SAY THAT HE APPROVED OF
10:06AM 20 ANYTHING AT THERANOS. AT THIS POINT, LOOK AT WHERE WE ARE. HE
10:06AM 21 WANTS TO SAY I WAS THE HERO, I TOLD THEM TO STOP.

10:07AM 22 THAT IS SIMPLY NOT TRUE.

10:07AM 23 OKAY. LET'S MOVE ON TO DR. ROSENDORFF'S DEPARTURE FROM
10:07AM 24 THERANOS.

10:07AM 25 SO THE STORY OF DR. ROSENDORFF'S DEPARTURE IS VERY MUCH

10:07AM 1 TIED UP WITH A PARTICULAR ASSAY CALLED POTASSIUM. YOU MAY HAVE
10:07AM 2 HEARD THE TERM ISE, AND POTASSIUM IS ONE OF THE ISE ASSAYS.
10:07AM 3 THE OTHERS ONES, BY THE WAY, ARE SODIUM AND CHLORIDE.

10:07AM 4 SO THE PROBLEM WITH DR. ROSENDORFF IS HE IMPLEMENTS
10:07AM 5 PROCEDURES AND THEN STARTS COMPLAINING ABOUT HIS OWN
10:07AM 6 PROCEDURES, AND BASICALLY THE COMPANY JUST LOST CONFIDENCE IN
10:07AM 7 HIM.

10:07AM 8 SO LET'S LOOK AT THE POTASSIUM ISSUE HERE.

10:07AM 9 SO THE POTASSIUM ASSAY ON MODIFIED SIEMENS, MODIFIED
10:07AM 10 PREDICATE IS APPROVED BY DR. ROSENDORFF ON MARCH 24TH, 2014.
10:08AM 11 THAT'S EXHIBIT 9315.

10:08AM 12 AND THEN DR. ROSENDORFF ASKED SOME QUESTIONS ABOUT THE
10:08AM 13 NATURE OF POTASSIUM.

10:08AM 14 AND THE ONE THING THAT COULD HAPPEN WITH REGARD TO
10:08AM 15 POTASSIUM IN PARTICULAR IS SOMETHING CALLED HEMOLYSIS?

10:08AM 16 HE SAYS CORRECT.

10:08AM 17 AND AGAIN, AN ISSUE THAT IS PARTICULARLY AN ISSUE WITH
10:08AM 18 THIS PARTICULAR ASSAY HEMOLYSIS, OR POTASSIUM RATHER.

10:08AM 19 AND THEN DR. ROSENDORFF WAS ASKED, AND THAT WOULD BE WHERE
20 THE ACTUAL PROCESS OF COLLECTING THE SAMPLE RESULTS IN RED
21 BLOOD CELLS BASICALLY BURSTING?

22 HE SAYS CORRECT.

23 SO TAKING A FINGERSTICK, THE COLLECTION ISN'T DONE
24 CORRECTLY, AND THE RED BLOOD CELLS BURST AND IT CREATES THIS
10:08AM 25 CONDITION CALLED HEMOLYSIS IN THE SAMPLE. SO IT'S A SAMPLE

10:08AM 1 COLLECTION ISSUE.

10:08AM 2 QUESTION. THAT CREATES KIND OF ARTIFACTS THAT DON'T MAKE

10:09AM 3 THE TEST WORK AS DESIGNED?

10:09AM 4 HE SAYS CORRECT.

10:09AM 5 AND THAT HAPPENED AT THERANOS FROM TIME TO TIME; RIGHT?

10:09AM 6 HE SAYS FREQUENTLY.

10:09AM 7 AND THAT HAPPENS IN OTHER LABS, TOO?

10:09AM 8 HE SAYS YES.

10:09AM 9 AND IN FACT ALL LABS MAKE ERRORS; RIGHT?

10:09AM 10 HE SAYS YES.

10:09AM 11 AND SO THAT'S THE HEMOLYSIS ISSUE AND THAT'S SOMETHING TO

10:09AM 12 KEEP IN MIND AS WE GO THROUGH THE REST OF THE POTASSIUM STORY.

10:09AM 13 SO DR. ROSENDORFF EVENTUALLY COMPLAINED ABOUT THE ISSUE OF

10:09AM 14 RELEASING WHAT ARE CALLED CRITICAL RESULTS, THOSE ARE ABNORMAL

10:09AM 15 RESULTS WHERE IT COULD INDICATE THAT THE PERSON IS HAVING A

10:09AM 16 MEDICAL CONDITION, AND THERE'S PARTICULAR CARE THAT NEEDS TO BE

10:09AM 17 PAID OBVIOUSLY TO CRITICAL RESULTS BECAUSE IF SOMEONE IS HAVING

10:09AM 18 A POTASSIUM ISSUE, THEY SHOULD KNOW THAT, AND IF THEY'RE NOT,

10:09AM 19 YOU KNOW, YOU WOULDN'T WANT TO REPORT THAT INCORRECTLY.

10:09AM 20 SO THIS CARE TAKING WITH CRITICAL RESULTS.

10:09AM 21 BUT DR. ROSENDORFF CERTAINLY COULD RELEASE AND DID RELEASE

10:09AM 22 CRITICAL RESULTS. HERE'S ONE FROM APRIL 2014 WHERE HE WRITES,

10:09AM 23 "HODA, I AM ASSUMING YOU HAVE CONFIRMED WITH TINA LIN AND

10:10AM 24 DANIEL YOUNG THAT THE CTN WAS NOT COMPROMISED IN ANY WAY? IF

10:10AM 25 THIS IS THE CASE, THEN PLEASE CALL A CRITICAL FOR THIS

10:10AM 1
10:10AM 2
10:10AM 3
10:10AM 4
10:10AM 5
10:10AM 6
10:10AM 7
10:10AM 8
10:10AM 9
10:10AM 10
10:10AM 11
10:10AM 12
10:10AM 13
10:10AM 14
10:10AM 15
10:10AM 16
10:11AM 17
10:11AM 18
10:11AM 19
10:11AM 20
10:11AM 21
10:11AM 22
10:11AM 23
10:11AM 24
10:11AM 25

PATIENT."

SO THEY'RE CHECKING TO MAKE SURE THAT THE CAPILLARY TUBE
AND NANOTAINER IS NOT COMPROMISED LIKE A SAMPLE COLLECTION
ISSUE.

AND MS. ALAMDAR REPORTS, "HI ADAM,
"I LOOKED AT THE CTN IMAGE." SO SHE IS LOOKING AT AN
IMAGE OF THE ACTUAL CAPILLARY TUBE AND NANOTAINER. SHE
REPORTED IN THIS CASE, IT IS NOT HEMOLYSIZED. "WE'RE GOING TO
RELEASE ALL OF THE ISE'S INCLUDING THE CRITICAL K," A SYMBOL
FOR POTASSIUM.

SO, IF THIS SAMPLE WASN'T COMPROMISED, THEN HE WOULD CALL
THE CRITICAL RESULT.

AND NOW THERE IS MORE ABOUT POTASSIUM WE SHOULD DISCUSS.
SO HERE IS, ON MAY 23RD, 2014, DR. YOUNG SENDS AN EMAIL
TO MS. HOLMES WITH A COPY TO MR. BALWANI.

AND HERE DR. YOUNG SAYS, "I WANTED TO UPDATE YOU ON THE
ISE STUDIES."

AND THEN HE SAYS, "WITH OUR NEW APPROACH, WE HAVE NOW
SHOWN THAT WE CAN PROCESS AND RUN ISE'S WITH DILUTED VENOUS
SAMPLES WITH GREAT ACCURACY AND PRECISION (SHOWN NOW OVER
10 DAYS AND 48 SUBJECTS) ."

SO DR. YOUNG IS RUNNING A STUDY AND HE'S TRYING TO
OPTIMIZE THE POTASSIUM, WHICH IS ONE OF THE ISE ASSAYS, AND
HE'S REPORTING TO MR. BALWANI THAT HE BELIEVES THAT THEY CAN
RUN WITH GREAT ACCURACY AND PRECISION.

10:11AM 1 SO, AGAIN, WHAT IS MR. BALWANI SUPPOSED TO THINK WHEN HE
10:11AM 2 GETS THAT FROM HIS LEAD SCIENTIST? HE'S SUPPOSED TO THINK IT
10:11AM 3 LOOKS LIKE THEY'VE GOT THIS, RIGHT? I'VE ANSWERED MY OWN
10:11AM 4 QUESTION.

10:11AM 5 LET'S GO TO THE NEXT DOCUMENT.

10:11AM 6 SO MR. BALWANI RESPONDS TO THE EMAIL WE JUST SAW AND HE
10:11AM 7 SAYS, "THIS IS TRULY GREAT PROGRESS AND A BIG COMPETITIVE
10:12AM 8 ADVANTAGE FOR US."

10:12AM 9 SO MR. BALWANI IS EXCITED ABOUT THE WORK THAT THE
10:12AM 10 SCIENTISTS HAVE DONE.

10:12AM 11 HE SAYS "WE NEED TO KEEP THIS PROJECT, THE CODE,
10:12AM 12 CALIBRATION AND EVERYTHING WE LEARNED HERE AS THERANOS TRADE
10:12AM 13 SECRET."

10:12AM 14 HE SAYS, LOOK, WE HAVE SOLVED FOR DOING A SMALL SAMPLE,
10:12AM 15 FINGERSTICK SAMPLES WITH POTASSIUM, AND AS FAR AS MR. BALWANI
10:12AM 16 KNOWS, THAT'S SOMETHING THAT THERANOS WAS ABLE TO ACCOMPLISH
10:12AM 17 SCIENTIFICALLY, THAT NOT SOMETHING OTHER COMPETITORS HAVE, AND
10:12AM 18 HE WANTS TO MAKE SURE THAT THE TECHNOLOGY IS PROTECTED. THAT'S
10:12AM 19 HOW EXCITED MR. BALWANI IS ABOUT THE SCIENTIFIC WORK THAT IS
10:12AM 20 GOING ON.

10:12AM 21 SO WHAT HAPPENS? DR. YOUNG SAYS, "SOUNDS GOOD. I'LL GET
10:12AM 22 TOGETHER WITH MONA AND DRAFT THE STRATEGY."

10:12AM 23 AND DR. ROSENDORFF SAYS, "DANIEL,
10:12AM 24 "CONGRATULATIONS ON CRACKING THIS."

10:12AM 25 SO SOLVING THE POTASSIUM ISSUE THAT THEY WERE LOOKING AT.

10:12AM 1 SO AGAIN, I THINK I SAID THIS YESTERDAY AT THE BEGINNING,
10:13AM 2 BUT WHEN THERE'S A PROBLEM, THE METHOD HERE THAT MR. BALWANI
10:13AM 3 WANTS TO SEE IS DO THE STUDY, SOLVE THE PROBLEM, GET TO THE
10:13AM 4 BOTTOM OF IT.

10:13AM 5 IT'S NOT, YEAH, WE'RE TAKING MONEY FROM PATIENTS SO LET'S
10:13AM 6 JUST KEEP GOING, LIKE WHY DISTURB IT.

10:13AM 7 NO, THEY WANT TO KNOW WHAT IS GOING ON. THEY WANT TO GET
10:13AM 8 TO THE BOTTOM OF THINGS, THAT'S WHAT MR. BALWANI -- THAT'S WHAT
10:13AM 9 ALL OF THE EMAILS SHOW THAT MR. BALWANI IS INTERESTED IN, AND
10:13AM 10 THIS IS ONE OF THOSE EXAMPLES.

10:13AM 11 SO LET'S TALK ABOUT POTASSIUM SOME MORE.

10:13AM 12 DR. YOUNG REPORTS ON JUNE 28TH, "WE HAVE PLANNED A STUDY
10:13AM 13 TO UNDERSTAND THESE FACTORS AND WILL THEN MAKE REFINEMENTS
10:13AM 14 WHERE NEEDED. I THINK WE ARE VERY CLOSE TO HAVING PERFECTED
10:13AM 15 OUR POTASSIUM ASSAY, MAKING IT THE MOST ROBUST POTASSIUM ASSAY
10:13AM 16 FROM FINGERSTICK SAMPLES IN THE WORLD."

10:13AM 17 AND MR. BALWANI WRITES, "I AGREE WITH THIS BUT WOULD LIKE
10:14AM 18 TO MOVE RAPIDLY SO CAN HAVE THE RIGHT PERFECT SOLUTION IN PLACE
10:14AM 19 ASAP."

10:14AM 20 THAT'S MR. BALWANI'S DIRECTION. HE CAN'T DO THE
10:14AM 21 SCIENTIFIC WORK HIMSELF BUT HE CAN DIRECT, OKAY, LET'S GET THE
10:14AM 22 PERFECT SOLUTION IN PLACE.

10:14AM 23 AND THEN DR. YOUNG REPORTS, "INITIAL STUDY WAS RUN AND
10:14AM 24 ANALYZED TODAY.

10:14AM 25 "WE ARE INITIATING THE MORE EXTENSIVE STUDY ACROSS TWO

10:14AM 1 DAYS WITH ANALYSIS AT TIME 0 AND 24 HOURS AFTER SAMPLE
10:14AM 2 COLLECTION. THE GOAL OF THIS STUDY IS TO ESTABLISH AND
10:14AM 3 DEMONSTRATE OPTIMAL PROCEDURES FOR SAMPLE PROCESSING TO ENSURE
10:14AM 4 RELIABLE TEST RESULTS."

10:14AM 5 THAT'S WHAT THEY'RE TRYING TO DO, TO ENSURE RELIABLE
10:14AM 6 RESULTS.

10:14AM 7 OKAY. LATER THERE'S A MEETING AMONG THE LAB STAFF, NOT
10:14AM 8 MR. BALWANI, INCLUDING DR. ROSENDORFF, ABOUT POTASSIUM. AND
10:14AM 9 THIS IS THE FLOW CHART THAT COMES OUT OF THIS MEETING. AND IF
10:14AM 10 YOU JUST GO THROUGH IT, YOU CAN SEE THAT THE LIHEP CTN, IF IT'S
10:15AM 11 NORMAL IT'S GOOD TO RELEASE THE RESULT.

10:15AM 12 IF THERE ARE ABNORMAL RESULTS FROM THE ASSAY, THE SAMPLE
10:15AM 13 TEST, THEN YOU CHECK CTN IMAGE. WE SAW THAT BEFORE. THERE WAS
10:15AM 14 A CHECK OF THE IMAGE BEFORE THEY CALLED THE CRITICAL RESULT.

10:15AM 15 IF THE CHECK OF THE IMAGE SHOWS BRIDGE OR INTERFERENCE OR
10:15AM 16 COMPROMISE, IF THAT'S THE CASE, THEN YOU GO TO THE BOTTOM, YES,
10:15AM 17 VOID ABNORMAL AND CRITICAL RESULTS.

10:15AM 18 SO, OF COURSE, IF IT WAS A COMPROMISED SAMPLE, WE DON'T
10:15AM 19 WANT TO CALL IT CRITICAL FOR THE PATIENT IF THE SAMPLE
10:15AM 20 COLLECTION HAD AN ISSUE.

10:15AM 21 THE SAMPLE COLLECTION IS OF COURSE THE WAY THE SAMPLE IS
10:15AM 22 COLLECTED, THAT'S A HEMOLYSIS ISSUE, NOT, WELL, THE EDISON
10:15AM 23 DEVICE DOESN'T WORK OR SOMETHING LIKE THAT, OR THE MODIFIED
10:15AM 24 PREDICATE IN THIS CASE DOESN'T WORK. THIS IS A SAMPLE
10:15AM 25 COLLECTION.

10:15AM 1 BUT, OF COURSE, IF THE CTN IS COMPROMISED AND THERE'S THAT
10:15AM 2 ISSUE, THEN YOU WOULD NOT REPORT THE CRITICAL RESULTS.

10:15AM 3 BUT IF IT'S NOT COMPROMISED, THEN THE FLOW CHART THAT
10:16AM 4 EMERGED FROM THIS MEETING OF THE SCIENCE TEAM IS, NO, THEN
10:16AM 5 RELEASE THE RESULTS.

10:16AM 6 SO DR. ROSENDORFF IS NOT SAYING NEVER RELEASE CRITICAL
10:16AM 7 RESULTS. HE'S SAYING, WELL, DON'T RELEASE THEM IF THERE'S A
10:16AM 8 COMPROMISED SAMPLE.

10:16AM 9 AND DR. ROSENDORFF MAKES THIS INTO THE OFFICIAL STANDARD
10:16AM 10 OPERATING PROCEDURE. THIS IS FROM EXHIBIT 20336. SO RIGHT
10:16AM 11 AFTER THAT MEETING DR. ROSENDORFF PUT THIS INTO THE STANDARD
10:16AM 12 OPERATING PROCEDURE AND HE SENT THAT AROUND.

10:16AM 13 SO THAT'S THE PROCEDURE THAT DR. ROSENDORFF PUT IN PLACE.

10:16AM 14 AGAIN, IMPORTANT TO REMEMBER, NOT VOID ALL CRITICAL
10:16AM 15 RESULTS, BUT VOID THEM IF THERE'S A COMPROMISED SAMPLE, LOOKING
10:16AM 16 AT THE CTN IMAGE.

10:16AM 17 OKAY. THE REASON I'M TELLING YOU ALL OF THIS IS BECAUSE
10:16AM 18 THERE'S AN EMAIL THAT THE GOVERNMENT HAS SHOWED YOU THAT
10:16AM 19 DR. ROSENDORFF EVENTUALLY SAYS, WELL, I DON'T UNDERSTAND THE
10:16AM 20 CLINICAL VALUE OF THE TESTS FOR POTASSIUM WHEN, WHENEVER
10:17AM 21 THERE'S A CRITICAL RESULT, WE JUST VOID IT.

10:17AM 22 WELL, THAT DOES SOUND LIKE A PROBLEM.

10:17AM 23 BUT THAT'S NOT WHAT THE PROCEDURE IS, SO THAT WAS AN
10:17AM 24 OVERSTATEMENT OF WHAT WAS REALLY GOING ON.

10:17AM 25 AND SO DR. ROSENDORFF AGAIN PUT A PROCEDURE IN PLACE, AND

10:17AM 1 THEN HE'S CRITICIZING HIS OWN PROCEDURE IN A WAY THAT IS NOT
10:17AM 2 EVEN REALLY CORRECT WHEN YOU LOOK AT THE SOP THAT HE WROTE.

10:17AM 3 SO THE COMPANY LOSES CONFIDENCE IN HIM.

10:17AM 4 BUT ANYWAY, IN ANY EVENT, DR. ROSENDORFF, HE'S ASKED THE
10:17AM 5 QUESTION, AND, IN FACT ALL LABS MAKE ERRORS?

10:17AM 6 HE SAYS YES.

10:17AM 7 AND THEN HE TALKS ABOUT HIS EXPERIENCE -- WELL, THE
10:17AM 8 QUESTION IS ABOUT HIS EXPERIENCE AT OTHER LABS, INCLUDING THE
10:17AM 9 UNIVERSITY OF PITTSBURGH, THERE WERE ERRORS THAT WERE
10:17AM 10 OCCASIONALLY MADE; RIGHT?

10:17AM 11 HE SAYS YES.

10:17AM 12 AND YOU DID YOUR BEST TO CORRECT THEM?

10:17AM 13 HE SAYS YES.

10:17AM 14 OKAY. BUT THIS IS DR. ROSENDORFF'S OWN WORDS FROM
10:17AM 15 JULY 18TH, 2014. SO WHATEVER HE SAYS ON THE WITNESS STAND,
10:18AM 16 THIS IS WHAT HE WROTE TO DR. PHILLIP CHEN WHEN HE WAS
10:18AM 17 RESPONDING TO AN INQUIRY.

10:18AM 18 HE SAYS PHYSICIAN EXPRESSED DOUBTS REGARDING OUR
10:18AM 19 TECHNOLOGY AND REPEATEDLY ASKED ME WHAT OUR METHOD IS, AND HOW
10:18AM 20 WE ENSURE ACCURACY.

10:18AM 21 DR. ROSENDORFF REPLIED THAT THERANOS METHODS HAVE BEEN
10:18AM 22 EXTENSIVELY VALIDATED AGAINST FDA APPROVED PREDICATE METHODS, I
10:18AM 23 DIDN'T DESCRIBE THE THERANOS METHOD PER COMPANY'S NONDISCLOSURE
10:18AM 24 AND CONFIDENTIALITY RULES.

10:18AM 25 AND DR. ROSENDORFF IS THE ONE WHO KNOWS THIS BECAUSE HE'S

10:18AM 1 THE ONE WHO SIGNED ALL OF THOSE VALIDATION REPORTS, SO HE KNOW
10:18AM 2 ALL THE VALIDATION REPORTS ARE COMPARING SAMPLES WITH FDA
10:18AM 3 APPROVED PREDICATE METHODS.

10:18AM 4 SO HE KNOWS THEY'VE BEEN EXTENSIVELY VALIDATED. THAT WAS
10:18AM 5 DR. ROSENDORFF'S OWN WORK, SO HE'S IN THE BEST POSITION TO
10:18AM 6 SPEAK TO THAT AND THAT'S WHAT HE TELLS DR. CHEN.

10:18AM 7 AND HE GOES ON.

10:18AM 8 DR. ROSENDORFF SAYS, PHYSICIAN ASKED IF HE IS THE ONLY
10:18AM 9 M.D. QUERYING LIPID RESULTS.

10:19AM 10 I ANSWERED THAT THE RATE OF PHYSICIAN QUERIES IS NOT
10:19AM 11 HIGHER THAN MIGHT BE EXPECTED AND IS NOT HIGHER THAN IN MY
10:19AM 12 PREVIOUS JOB AT THE UNIVERSITY OF PITTSBURGH.

10:19AM 13 SO HE'S NOT SEEING SOME SPIKE IN PHYSICIAN QUERIES AT
10:19AM 14 THERANOS.

10:19AM 15 OKAY. DR. ROSENDORFF IS ASKED THIS VERY IMPORTANT
10:19AM 16 QUESTION.

10:19AM 17 "AND YOU NEVER PROVIDED PATIENT RESULTS THAT YOU KNEW WERE
10:19AM 18 INACCURATE OR UNRELIABLE AT THE TIME YOU PROVIDED THEM;
10:19AM 19 CORRECT?

10:19AM 20 HE SAYS CORRECT.

10:19AM 21 AND YOU WERE NEVER TOLD BY MR. BALWANI TO REPORT AN
10:19AM 22 INACCURATE REPORT?

10:19AM 23 NO.

10:19AM 24 AND YOU WERE NEVER TOLD BY MS. HOLMES TO REPORT AN
10:19AM 25 INACCURATE REPORT?

10:19AM 1 NO.

10:19AM 2 SO NO ONE IS DIRECTING HIM TO REPORT INACCURATE RESULTS
10:19AM 3 AND HE DOESN'T EVER RELEASE RESULTS THAT HE THOUGHT, THAT HE
10:19AM 4 BELIEVED WERE INACCURATE.

10:19AM 5 AND THEN THERE'S OTHER TESTIMONY.

10:19AM 6 THE QUESTION IS: OKAY. IS IT YOUR TESTIMONY UNDER OATH,
10:20AM 7 DR. ROSENDORFF, THAT WHILE YOU WERE AT THERANOS, THAT YOU
10:20AM 8 RELEASED OR ALLOWED THE RELEASE OF RESULTS TO PATIENTS THAT YOU
10:20AM 9 DID NOT THINK WERE ACCURATE?

10:20AM 10 AND HIS ANSWER WAS, I NEVER RELEASED RESULTS THAT I
10:20AM 11 THOUGHT WERE INACCURATE, NO.

10:20AM 12 SO IF DR. ROSENDORFF DOESN'T THINK THAT HE'S RELEASING
10:20AM 13 INACCURATE RESULTS, HOW WOULD MR. BALWANI THINK THAT THERANOS
10:20AM 14 WAS RELEASING INACCURATE RESULTS?

10:20AM 15 DR. ROSENDORFF IS THE LAB DIRECTOR. YES, HE REPORTED TO
10:20AM 16 MR. BALWANI AND MR. BALWANI OVERSAW THE OPERATIONS OF THE
10:20AM 17 CLINICAL LAB, BUT IF DR. ROSENDORFF DOESN'T THINK HE'S
10:20AM 18 RELEASING INACCURATE RESULTS, THERE'S NO WAY THAT MR. BALWANI
10:20AM 19 WOULD HAVE THAT KNOWLEDGE THAT THE GOVERNMENT IS TRYING TO
10:20AM 20 CLAIM THAT HE HAS.

10:20AM 21 AND THAT'S WHAT THIS CASE IS ABOUT, RIGHT? LIKE, IS
10:20AM 22 MR. BALWANI KNOWINGLY CHEATING PATIENTS OUT OF THEIR MONEY,
10:20AM 23 THEIR \$35 OR WHATEVER THEY ARE PAYING, IS MR. BALWANI KNOWINGLY
10:20AM 24 AND INTENTIONALLY DOING THAT KNOWING THAT THE LAB IS
10:20AM 25 INTENSIONALLY RELEASING INACCURATE RESULTS? THAT'S REASONABLE

10:20AM 1 DOUBT RIGHT THERE.

10:21AM 2 NOW, THE GOVERNMENT LIKES TO TALK ABOUT THE NEXT TOPIC,
10:21AM 3 WHICH IS TEMPORARY LAB DIRECTORS. SO THIS IS DR. DHAWAN AND
10:21AM 4 MS. SAWYER.

10:21AM 5 THE PICTURE THE GOVERNMENT IS TRYING TO PAINT IS THAT
10:21AM 6 MR. BALWANI DOESN'T LIKE DR. ROSENDORFF ASKING QUESTIONS SO
10:21AM 7 HE'S NOW GOING TO FIND PEOPLE THAT MAY NOT ASK SO MANY
10:21AM 8 QUESTIONS.

10:21AM 9 THAT SOUNDS LIKE A NICE STORY FROM THE GOVERNMENT'S
10:21AM 10 PERSPECTIVE, BUT IT'S JUST NOT TRUE.

10:21AM 11 HERE'S WHAT HAPPENS. FIRST OF ALL, JUST TO SET A BASELINE
10:21AM 12 HERE, THE GOVERNMENT LIKES TO SAY, WELL DR. DHAWAN WAS
10:21AM 13 MR. BALWANI'S DERMATOLOGIST.

10:21AM 14 WELL, YEAH, THAT'S TRUE. MR. BALWANI HAD BEEN A PATIENT
10:21AM 15 OF DR. DHAWAN'S.

10:21AM 16 BUT DR. DHAWAN ALSO WAS A MEDICAL DOCTOR WHO RAN HIS OWN
10:22AM 17 CLINICAL LAB AND HAD THE QUALIFICATIONS TO BE A LAB DIRECTOR.

10:22AM 18 AND AS YOU MIGHT REMEMBER, THE ORIGINAL REQUEST FROM
10:22AM 19 MR. BALWANI IS, DR. DHAWAN, DO YOU WANT TO DO THIS OR DO YOU
10:22AM 20 KNOW SOMEONE ELSE WHO COULD DO THIS? AND IT WASN'T ABOUT,
10:22AM 21 OKAY, IT'S GOT TO BE DR. DHAWAN, I'M HAND PICKING THIS GUY.

10:22AM 22 SO DR. DHAWAN AGREED TO BECOME THE LAB DIRECTOR. THERE
10:22AM 23 WAS A CO-LAB DIRECTOR NAMED DR. SAWYER. WE'LL TALK ABOUT THAT
10:22AM 24 IN A MINUTE.

10:22AM 25 LET'S JUST TALK ABOUT THESE TEMPORARY LAB DIRECTORS AND

10:22AM 1 WHAT IS REQUIRED AND WHAT IS NOT REQUIRED.

10:22AM 2 SO WE GO TO THE NEXT SLIDE.

10:22AM 3 A LAB DIRECTOR DOES NOT HAVE TO BE IN THE LAB FULL TIME.

10:22AM 4 THAT'S NOT THE REQUIREMENT.

10:22AM 5 A LAB DIRECTOR COULD BE A LAB DIRECTOR OF AS MANY AS FIVE
10:22AM 6 LABS AT THE SAME TIME.

10:22AM 7 DR. DHAWAN SAID THE SAME THING AS DR. ROSENDORFF ABOUT
10:22AM 8 THAT TOPIC.

10:22AM 9 AND DR. SAWYER SAID THE SAME THING AS WELL.

10:23AM 10 OKAY. DR. SAWYER'S UNDERSTANDING WAS THAT HER POSITION
10:23AM 11 WAS TEMPORARY AND THAT A NEW LAB DIRECTOR WOULD COME ON IN
10:23AM 12 THREE MONTHS. THAT WAS HER EXPECTATION AND THAT'S WHAT SHE
10:23AM 13 BELIEVED BASED ON THE INFORMATION THAT SHE HAD WHEN SHE STARTED
10:23AM 14 THIS JOB, RIGHT?

10:23AM 15 SO NO ONE WAS PICKING TEMPORARY LAB DIRECTORS TO BE THERE
10:23AM 16 FOR ALL TIME.

10:23AM 17 NEXT SLIDE.

10:23AM 18 DR. DHAWAN WAS AWARE THAT DR. SURAJ SAKSENA BEGAN THE
10:23AM 19 PROCESS TO BECOME QUALIFIED AS A LAB DIRECTOR AT THE HIGH
10:23AM 20 COMPLEXITY LAB, WHICH WAS NEWARK, IN 2014, THAT HE HAD BEEN
10:23AM 21 SEEKING TO DO THIS SINCE 2014.

10:23AM 22 DR. SAKSENA, YOU'VE SEEN MANY EMAILS WITH HIS NAME ON
10:23AM 23 THEM, AND HE WAS SOMEONE WHO WORKED AT THE LAB AND CONTINUED TO
10:23AM 24 WORK AT THE LAB, AND HE WAS QUALIFYING TO BE THE LAB DIRECTOR
10:24AM 25 AT NEWARK IN 2014.

10:24AM 1 REMEMBER, DR. DHAWAN LEFT NEAR THE END OF NOVEMBER OF
10:24AM 2 2014. SO THE INTENTION WAS NOT TO HAVE ABSENTEE LAB DIRECTORS,
10:24AM 3 AS THE GOVERNMENT CALLS THEM, BUT TO HAVE DR. SAKSENA IN PLACE
10:24AM 4 AS THE LAB DIRECTOR, AND THAT'S WHAT DR. DHAWAN WAS AWARE OF AS
10:24AM 5 WELL WAS GOING ON.

10:24AM 6 OKAY. THE NEXT DOCUMENT.

10:24AM 7 SO MR. BALWANI WAS INFORMED ABOUT THIS PROCESS. SO THIS
10:24AM 8 IS DR. SAKSENA ACTUALLY FILING HIS ONLINE APPLICATION FOR
10:24AM 9 CLINICAL LABORATORY DIRECTOR LICENSURE WITH THE CALIFORNIA
10:24AM 10 DEPARTMENT OF PUBLIC HEALTH.

10:24AM 11 AND DR. SAKSENA IS REPORTING THIS. HE SAYS THAT HE
10:24AM 12 APPLIED WITH THE CALIFORNIA DEPARTMENT OF PUBLIC HEALTH
10:24AM 13 LABORATORY FIELD SERVICES FOR A CLINICAL LABORATORY DIRECTOR
10:24AM 14 LICENSURE.

10:24AM 15 HE SAYS, I APPLIED ON MAY 20TH OF 2015, SUBMITTED A SIGNED
10:24AM 16 COPY OF THE ATTESTATION FORM ON MAY 26TH, 2015. SEE BELOW MY
10:25AM 17 CORRESPONDENCE.

10:25AM 18 HE SAYS, IT HAS BEEN CLOSE TO 9 WEEKS SINCE MY APPLICATION
10:25AM 19 WAS SUBMITTED. CAN YOU PLEASE LET ME KNOW WHEN I CAN EXPECT TO
10:25AM 20 HEAR FROM YOU REGARDING THE APPROVAL OF MY APPLICATION. PLEASE
10:25AM 21 LET ME KNOW IF THERE'S ANYTHING I CAN DO TO HELP EXPEDITE THE
10:25AM 22 PROCESS.

10:25AM 23 SO DR. SAKSENA IS TRYING TO MOVE THIS PROCESS ALONG. IT'S
10:25AM 24 GOING SLOWLY WITH THE STATE REGULATORS.

10:25AM 25 THE POINT IS THAT MR. BALWANI IS TOLD WHEN HE GETS THIS

10:25AM 1 EMAIL, THAT'S WHAT DR. SAKSENA IS DOING IS TRYING TO BE THE LAB
10:25AM 2 DIRECTOR. THERE'S NOT AN INTENTION TO KEEP DR. DHAWAN OR
10:25AM 3 DR. SAWYER AS ABSENTEE LAB DIRECTORS.

10:25AM 4 BY THE WAY, DR. SAKSENA AND OTHER SCIENTISTS THAT WE'LL
10:25AM 5 TALK ABOUT IN A FEW MINUTES, THEY'RE STILL THERE. THEY ARE
10:25AM 6 SCIENTISTS WHO WERE RUNNING THE LAB. IT'S NOT LIKE NO ONE IS
10:25AM 7 HOME AND SOMEHOW THE BLOOD TESTING IS GOING ON WITH UNQUALIFIED
10:25AM 8 PEOPLE.

10:25AM 9 THIS EMAIL CHAIN GOES ON. YOU CAN SEE THAT MR. BALWANI IS
10:26AM 10 COPIED ON THIS ONE.

10:26AM 11 DR. SAKSENA WRITES TO MR. BALWANI, HI SUNNY,
10:26AM 12 PLEASE SEE BELOW.

10:26AM 13 I AM VERY PLEASED TO SEE THAT NRCC IS NOW ON THEIR LIST OF
10:26AM 14 APPROVED BOARDS FOR CLINICAL CHEMIST.

10:26AM 15 HE SAYS THEY ARE ASKING ME TO SUBMIT A HARD COPY OF MY
10:26AM 16 PH.D. DISSERTATION AND ALSO MY TRANSCRIPTS. MY TRANSCRIPTS
10:26AM 17 HAVE ALREADY BEEN SENT TO LFS, SO I DON'T UNDERSTAND WHAT THE
10:26AM 18 ISSUE IS HERE.

10:26AM 19 SO THEY'RE TRYING TO PUSH THIS ALONG AND THAT'S WHAT
10:26AM 20 MR. BALWANI IS INFORMED OF.

10:26AM 21 AS I SAID A FEW MINUTES AGO, THE SCIENTIFIC LEADERSHIP
10:26AM 22 TEAM IS STILL THERE: DANIEL YOUNG, DR. YOUNG, DR. SAKSENA,
10:26AM 23 DR. PANGARKAR, DR. MASINDE, HODA ALAMDAR, GURBIR SIDHU,
10:26AM 24 LANGLEY GEE, AND NOSHIT DOSHI.

10:26AM 25 SO THOSE REMAIN, THE SCIENTIFIC LEADERSHIP TEAM,

10:27AM 1 REGARDLESS OF WHO THE LAB DIRECTOR IS.

10:27AM 2 AND AS WE SAW FROM THE TESTIMONY OF DR. SAWYER, YOU CAN
10:27AM 3 DELEGATE RESPONSIBILITIES TO OTHER SCIENTISTS IN THE LAB AND
10:27AM 4 THAT'S WHAT DR. SAWYER IS TALKING ABOUT HERE. SHE'S ACTUALLY
10:27AM 5 TALKING ABOUT THE DELEGATION TO MR. GEE, THE QUALITY CONTROL
10:27AM 6 MANAGER.

10:27AM 7 AND DR. DHAWAN ALSO TALKS ABOUT THE DELEGATION. HE
10:27AM 8 UNDERSTANDS HE'S ABLE TO DELEGATE DUTIES AND THERE WAS A
10:27AM 9 DOCUMENT THAT HE SAW WHERE HE DID DELEGATE DUTIES.

10:27AM 10 IF YOU GO TO THE NEXT SLIDE.

10:27AM 11 AND HE BELIEVED THAT HE HAD BEEN DELEGATING ALL ALONG.

10:27AM 12 SO THE SCIENTIFIC TEAM IS STILL THERE. IT'S NOT
10:27AM 13 MR. BALWANI RUNNING THE LAB.

10:27AM 14 OKAY. REGARDING DR. SAWYER, DR. SAWYER IS CO-LAB DIRECTOR
10:28AM 15 AND SHE COMES IN BECAUSE THERE'S A CONSULTANT NAMED JERRY HURST
10:28AM 16 WHO SHE WORKED FOR, AND SHE, THROUGH THAT CONSULTANT
10:28AM 17 ARRANGEMENT THAT THERANOS HAD, WAS BROUGHT IN AS A
10:28AM 18 CO-LAB DIRECTOR. SO IT WASN'T JUST DR. DHAWAN. IT WAS ALSO
10:28AM 19 DR. SAWYER.

10:28AM 20 NOW, DR. SAWYER TESTIFIED THAT SHE DIDN'T REALLY DO VERY
10:28AM 21 MUCH. YOU KNOW, SHE SIGNED SOME SOP'S. WE SAW SOME OF THOSE.

10:28AM 22 BUT WHY? IT WASN'T MR. BALWANI WHO WAS STANDING IN HER
10:28AM 23 WAY. SHE SAYS SHE NEVER CALLED THE LAB TO SCHEDULE AN
10:28AM 24 APPOINTMENT TO GO SEE THE LAB.

10:28AM 25 SHE KNEW THE ADDRESS OF THE LAB, BUT SHE NEVER TOOK A

10:28AM 1 DRIVE OVER THERE TO VISIT THE LAB.

10:28AM 2 GO TO THE NEXT SLIDE.

10:28AM 3 SHE KNEW WHO SOME OF THE PEOPLE WERE. IN THIS CASE SHE'S
10:28AM 4 GOT THE NAMES OF THE PEOPLE THERE, GODFRED MASINDE,
10:28AM 5 HODA ALAMDAR, LANGLEY GEE, WHO SHE DELEGATED TO. SHE SEES
10:28AM 6 BROOKE BIVENS. SHE HAS ALL OF THESE NAMES AND SHE'S FREE TO
10:28AM 7 GIVE THEM A CALL OR STOP BY THE LAB AND CHAT WITH THEM.

10:29AM 8 AND SHE SAYS SHE DIDN'T REACH OUT TO ANY OF THESE PEOPLE
10:29AM 9 ABOUT THE THERANOS LAB, THAT SHE SAW THE DIFFERENT NAMES THAT
10:29AM 10 WERE LAB PERSONNEL, AND SHE SAW THEIR TITLES, AND SHE DIDN'T
10:29AM 11 REACH OUT TO THEM.

10:29AM 12 AND SHE DOESN'T EXPLAIN WHY NOT.

10:29AM 13 AND SHE CERTAINLY DIDN'T SAY, WELL, MR. BALWANI TOLD ME
10:29AM 14 NOT TO, OR SOMETHING LIKE THAT.

10:29AM 15 SO IT'S NOT CLEAR WHY DR. SAWYER WASN'T DOING HER JOB. IF
10:29AM 16 SHE NEEDED TO TALK TO THE LAB STAFF, SHE WAS FREE TO DO THAT,
10:29AM 17 AND SHE TESTIFIED THAT WAY.

10:29AM 18 NOW, MORE IMPORTANTLY, THE GOVERNMENT IS PAINTING A
10:29AM 19 PICTURE HERE THAT THERE'S BASICALLY NO ONE HOME. LIKE THERE'S
10:29AM 20 NO LAB DIRECTOR, THERE'S NO ONE TO TALK TO. IF A PHYSICIAN HAS
10:29AM 21 AN INQUIRY, THERE'S NOTHING YOU CAN DO.

10:29AM 22 THAT'S THE OPPOSITE OF WHAT HAPPENED HERE.

10:29AM 23 AND WE HEARD FROM DR. BURNES. AND DR. BURNES SAYS -- AND
10:29AM 24 THIS IS BECAUSE HE HAD A PATIENT DR. ELLSWORTH WHO YOU SAW AS
10:29AM 25 WELL, AND THIS WAS AN ISSUE THAT AROSE REGARDING THE PSA TEST

10:30AM 1 THAT DR. ELLSWORTH HAD.

10:30AM 2 DR. BURNES SAYS -- QUESTION: AND YOU HAD A CONVERSATION

10:30AM 3 WITH THE LAB?

10:30AM 4 DR. BURNES SAYS YES.

10:30AM 5 OKAY. I THINK YOU FOUND -- YOU SAID YOU FOUND THEM

10:30AM 6 PLEASANT TO TALK TO?

10:30AM 7 HE SAYS YES.

10:30AM 8 AND THEN HE'S LOOKING AT AN EXHIBIT, 4415.

10:30AM 9 AND HE SAYS THIS TIME IN THIS CALL YOU SPOKE TO THE LAB

10:30AM 10 DIRECTORS, AND THAT WAS DR. YOUNG?

10:30AM 11 AND HE SAYS I BELIEVE SO. I ASKED FOR THE NATIONAL LAB

10:30AM 12 DIRECTOR.

10:30AM 13 QUESTION. AND YOU WERE CONNECTED WITH DR. YOUNG?

10:30AM 14 I BELIEVE SO.

10:30AM 15 HE DOESN'T REMEMBER THE NAME.

10:30AM 16 SO WE'LL CALL HIM THE LAB DIRECTOR IN THAT CASE.

10:30AM 17 SO THE LAB DIRECTOR THAT YOU TALKED TO, YOU UNDERSTAND

10:30AM 18 THAT WAS HIS POSITION?

10:30AM 19 YES.

10:30AM 20 AND THE LAB DIRECTOR WAS ALSO PLEASANT AND RESPONSIVE TO

10:30AM 21 YOUR CONCERNS?

10:30AM 22 YES.

10:30AM 23 SO HE WAS ABLE VERY EASILY TO GET AHOLD OF DR. YOUNG WHO

10:30AM 24 WAS THE LAB DIRECTOR IN ARIZONA AND A QUALIFIED SCIENTIST TO

10:30AM 25 TALK TO ABOUT WHAT HE WANTED TO TALK ABOUT.

10:30AM 1 SO THIS IMPRESSION THAT THE GOVERNMENT IS TRYING TO LEAVE
10:31AM 2 YOU WITH IS THAT THERE'S NO ONE HOME, THERE'S NO ONE TO TALK
10:31AM 3 TO, DR. DHAWAN IS NOT RESPONDING TO PHYSICIAN QUERIES.

10:31AM 4 WELL, DR. BURNES HAD NO TROUBLE, NO TROUBLE GETTING
10:31AM 5 THROUGH TO DR. YOUNG TO ASK WHATEVER QUESTIONS HE WANTED TO
10:31AM 6 ASK. HE FOUND THE EXPERIENCE QUITE PLEASANT.

10:31AM 7 IT GOES FURTHER.

10:31AM 8 QUESTION. YOU'VE HAD CONVERSATIONS WITH OTHER PEOPLE WHO
10:31AM 9 WORK AT DIFFERENT LABORATORIES?

10:31AM 10 DR. BURNES SAYS, TO BE HONEST, VERY INFREQUENTLY, AND
10:31AM 11 MOSTLY BECAUSE THEY WEREN'T AS EASY TO ANSWER THE PHONE AS
10:31AM 12 THERANOS WAS.

10:31AM 13 OKAY.

10:31AM 14 IT'S VERY DIFFICULT TO GET AHOLD OF SOMEBODY AT, LIKE,
10:31AM 15 LABCORP.

10:31AM 16 I SEE. IN THE THERANOS CASE IT WAS EASY TO GET AHOLD OF
10:31AM 17 SOMEONE?

10:31AM 18 YES, IT WAS. THAT'S WHY I REMEMBER IT SO WELL.

10:31AM 19 SO NOT ONLY DID DR. BURNES TALK TO DR. YOUNG, HE ALSO
10:31AM 20 FOUND IT EXTREMELY EASY, WHERE HE FOUND IT VERY DIFFICULT TO
10:31AM 21 GET AHOLD OF SOMEONE AT A COMPETITIVE OF THERANOS CALLED
10:31AM 22 LABCORP, WHICH YOU'VE HEARD SOME THINGS ABOUT.

10:31AM 23 AGAIN, THIS IDERE THAT NO ONE IS HOME AT THE LAB, IT'S
10:32AM 24 JUST NOT TRUE.

10:32AM 25 AND, OF COURSE, THERANOS HAD THE HOURS IN THE LAB. THE

10:32AM 1 GOVERNMENT HAS TALKED VERY LITTLE OR NOT AT ALL ABOUT THAT LAB.

10:32AM 2 YOU CAN SEE THAT, IF YOU GO TO THE NEXT SLIDE, THERE WERE

10:32AM 3 42 STORES OPEN, OR 42 COLLECTION CENTERS, INCLUDING THE

10:32AM 4 WALGREENS STORES OPENED IN ARIZONA, AND THAT THERE WAS ONE IN

10:32AM 5 CALIFORNIA.

10:32AM 6 DR. YOUNG WAS THE LAB DIRECTOR IN ARIZONA, AS I'VE SAID.

10:32AM 7 NEXT SLIDE.

10:32AM 8 DR. DHAWAN KNEW THAT THERANOS OPENED A LAB IN ARIZONA AND

10:32AM 9 THAT DR. YOUNG WAS THE LAB DIRECTOR.

10:32AM 10 SO, AGAIN, THERE'S A REASON THAT THE GOVERNMENT IS NOT

10:32AM 11 PRESENTING OR NOT TALKING TO ANYONE IN ARIZONA ABOUT THE LAB.

10:32AM 12 THERE'S A REASON WHY THE GOVERNMENT IS NOT PRESENTING

10:32AM 13 DR. YOUNG, WHO, AGAIN, WAS ON SOMETHING LIKE 78 EMAILS IN THIS

10:32AM 14 CASE.

10:32AM 15 BUT YOU DIDN'T HEAR FROM HIM BECAUSE THIS IS NOT

10:32AM 16 CONSISTENT WITH THE GOVERNMENT'S STORY THAT THEY WANT TO TELL

10:33AM 17 ABOUT ABSENTEE LAB DIRECTORS AND SORT OF CHAOS.

10:33AM 18 OKAY. IT'S IMPORTANT TO SPEND JUST A LITTLE BIT OF TIME

10:33AM 19 TALKING ABOUT SARAH BENNETT AND CMS. AND AS YOU'VE HEARD, THE

10:33AM 20 CENTERS FOR MEDICARE AND MEDICAID SERVICES, CMS, AMONG OTHER

10:33AM 21 THINGS THAT AGENCY DOES, IT REGULATES CLINICAL LABORATORIES IN

10:33AM 22 THE UNITED STATES.

10:33AM 23 AND MS. BENNETT WAS THE WITNESS WHO YOU HEARD FROM FROM

10:33AM 24 CMS. MS. BENNETT WAS AN INSPECTOR FROM THE HEADQUARTERS

10:33AM 25 OFFICE.

10:33AM 1 THERE WAS ANOTHER INSPECTOR THAT YOU DID NOT HEAR FROM
10:33AM 2 NAMED GARY YAMAMOTO. MR. YAMAMOTO WAS AN INSPECTOR FROM THE
10:33AM 3 LOCAL SAN FRANCISCO OFFICE OF CMS AND WAS ALSO INVOLVED IN THIS
10:33AM 4 INSPECTION STARTING IN SEPTEMBER OF 2015, AND WE'LL TALK MORE
10:33AM 5 ABOUT MR. YAMAMOTO IN A MINUTE.

10:33AM 6 SO BEFORE WE GET TO THE 2015 INFORMATION, I JUST WANT TO
10:34AM 7 SPEND A MINUTE ON AN EARLIER INSPECTION. AND YOU MIGHT
10:34AM 8 REMEMBER THE TESTIMONY IN THIS CASE WAS THAT THESE ROUTINE
10:34AM 9 INSPECTIONS HAPPENED ABOUT EVERY TWO YEARS.

10:34AM 10 SO THE PREVIOUS ONE OCCURRED IN ABOUT DECEMBER OF 2013.
10:34AM 11 THERE WAS AN INSPECTOR FROM THE CALIFORNIA DEPARTMENT OF PUBLIC
10:34AM 12 HEALTH WHO CAME AND INSPECTED THERANOS IN DECEMBER OF 2013.

10:34AM 13 AND DURING TRIAL AND ON CLOSING ARGUMENT, THE GOVERNMENT
10:34AM 14 TRIED TO SUGGEST THAT THERE WAS SOME PLAN TO NOT ALLOW THIS
10:34AM 15 2013 INSPECTOR TO SEE WHAT WAS CALLED THE NORMANDY LAB, THE LAB
10:34AM 16 THAT WAS PARTLY AN R&D LAB BUT IT WAS ALSO A CLINICAL LAB
10:34AM 17 RUNNING THE THERANOS PROPRIETARY TESTING LIKE THE EDISONS AND
10:34AM 18 THE MODIFIED PREDICATES.

10:34AM 19 AND THE GOVERNMENTS PAINTS THIS PICTURE THAT THIS
10:34AM 20 INSPECTOR WAS SOMEHOW DENIED ACCESS.

10:34AM 21 FIRST OF ALL, DR. ROSENDORFF NEVER TESTIFIED TO THAT. HE
10:34AM 22 SAID -- AND YOU SAW THIS TESTIMONY YESTERDAY, I THINK
10:34AM 23 MR. SCHENK PUT IT ON THE SCREEN -- THAT IT WAS SIMPLY A MATTER
10:35AM 24 OF MR. BALWANI NOT WANTING THE PEOPLE GOING IN AND OUT OF THE
10:35AM 25 LAB DURING THE TIME THAT THE LAB WAS INSPECTED.

10:35AM 1 DR. ROSENDORFF DID NOT TESTIFY THAT PEOPLE WERE DENIED
10:35AM 2 ACCESS OR, YOU KNOW, MS. NORKIN WAS NOT ALLOWED THERE OR SOME
10:35AM 3 DECEPTION WAS ORCHESTRATED.

10:35AM 4 BUT HERE'S WHAT DID HAPPEN, AND THIS IS WHAT WE, THE
10:35AM 5 DEFENSE, HAVE TO SHOW YOU.

10:35AM 6 DR. ROSENDORFF IS ASKED A QUESTION, AND THEN YOU ALSO SAID
10:35AM 7 IN YOUR DIRECT EXAMINATION THAT YOU SHOWED HER VALIDATION
10:35AM 8 REPORTS?

10:35AM 9 HE SAID YES.

10:35AM 10 AND THE VALIDATION REPORTS WERE FOR THE EDISON DEVICE?

10:35AM 11 I BELIEVE SO, YES.

10:35AM 12 AND ALSO FOR THE MODIFIED PREDICATE DEVICE?

10:35AM 13 YES.

10:35AM 14 AND IT SAYS, I WAS INFORMING HER, MEANING THE INSPECTOR
10:35AM 15 FROM THE CALIFORNIA DEPARTMENT OF PUBLIC HEALTH, I WAS
10:35AM 16 INFORMING HER OF THE LDT'S THAT WE WERE RUNNING.

10:35AM 17 QUESTION. RIGHT. AND THE LDT'S WERE THE EDISON AND THE
10:35AM 18 MODIFIED PREDICATE; RIGHT?

10:35AM 19 CORRECT.

10:35AM 20 AND THE LAST QUESTION THERE, AND IT'S HIGHLIGHTED, YOU
10:35AM 21 WEREN'T TRYING TO HIDE ANYTHING FROM MS. NORKIN, THE CALIFORNIA
10:36AM 22 INSPECTOR, WERE YOU?

10:36AM 23 I WAS NOT.

10:36AM 24 SO DR. ROSENDORFF TESTIFIED THAT HE SHOWED HER THE REPORTS
10:36AM 25 FOR THE LABORATORY DEVELOPED TESTS FOR THE THERANOS PROPRIETARY

10:36AM 1 TECHNOLOGY. NOTHING WAS BEING HIDDEN FROM MS. NORKIN IN
10:36AM 2 DECEMBER OF 2013.

10:36AM 3 AND, IN FACT, TALKING ABOUT MR. BALWANI FOR HIS PART, HE'S
10:36AM 4 ASKED A QUESTION AND IT STARTS WITH THIS EMAIL FROM
10:36AM 5 SCOTT MARMER TO DR. ROSENDORFF.

10:36AM 6 AND IT SAYS, "APPROVED CLA CLIA INSPECTORS" IS THE TOPIC
10:36AM 7 AND IT'S DECEMBER 1ST, 2013, BEFORE THAT INSPECTION.

10:36AM 8 "APPROVED WITH ADAM TO ESCORT.

10:36AM 9 "EDGAR, THESE ARE GOVERNMENT INSPECTORS SO PLEASE CHECK
10:36AM 10 WITH SUNNY WHETHER OR NOT HE WANTS SECURITY TO ESCORT FOR THIS
10:36AM 11 ONE. THEY PROBABLY WON'T SIGN CDA'S," CONFIDENTIALITY
10:36AM 12 AGREEMENTS, "SINCE THEY ARE GOVERNMENT INSPECTORS."

10:36AM 13 IT GOES ON. MR. PAZ WRITES TO MR. BALWANI. "HELLO SUNNY,
10:37AM 14 "PLEASE READ THE EMAIL BELOW AND LET ME KNOW HOW YOU
10:37AM 15 WOULD LIKE US TO PROCEED WITH THE CLIA INSPECTOR VISIT."

10:37AM 16 AND SUNNY WRITES, "APPROVED.

10:37AM 17 "SCOTT CAN APPROVE SUCH VISITS."

10:37AM 18 SO HE DOESN'T EVEN NEED TO BE INVOLVED.

10:37AM 19 AND MR. PAZ WANTS TO BE REALLY SURE SO HE SAYS, "CORRECT,
10:37AM 20 WOULD YOU LIKE FOR US TO PROVIDE SECURITY ESCORT DURING THE
10:37AM 21 VISIT INTO BOTH CLIA AREAS?"

10:37AM 22 AND MR. BALWANI SIMPLY RESPONDS WITH A SIMPLE, "NO." HE
10:37AM 23 DOESN'T NEED A SECURITY ESCORT FOR THIS CALIFORNIA INSPECTOR,
10:37AM 24 HE'S NOT ARGUING WITH THAT, HE'S NOT ORCHESTRATING SPECIAL
10:37AM 25 SECRECY PROCEDURES.

10:37AM 1 SO THE IDEA THAT SOMEHOW SOMETHING WAS HIDDEN FROM THIS
10:37AM 2 CALIFORNIA INSPECTOR IS ANOTHER IMAGINARY TOPIC THAT THE
10:37AM 3 GOVERNMENT HAS PUT BEFORE YOU.

10:37AM 4 AND WHAT HAPPENS AFTER THE INSPECTION? CALIFORNIA AND CMS
10:37AM 5 ISSUES A CERTIFICATE OF COMPLIANCE, AND THAT'S ISSUED ON
10:38AM 6 JANUARY 9TH, 2014, JUST A FEW DAYS AFTER THAT INSPECTION.

10:38AM 7 SO I THINK THE GOVERNMENT SHOWED YOU DURING TRIAL AN
10:38AM 8 EXHIBIT THAT SHOWED THERE WAS SOME ISSUES IDENTIFIED DURING
10:38AM 9 THAT INSPECTION, AND I THINK IF YOU USE YOUR COMMON SENSE, I
10:38AM 10 DON'T KNOW IF THERE'S EVER BEEN AN AUDIT OR INSPECTION IN THE
10:38AM 11 HISTORY OF THE WORLD WHERE THE AUDITOR DIDN'T FIND SOME ISSUES.

10:38AM 12 BUT WHATEVER THOSE WERE, THEY WERE QUICKLY RESOLVED, AND
10:38AM 13 ON JANUARY 9TH, 2014, CMS ISSUED A CERTIFICATE OF COMPLIANCE,
10:38AM 14 ADAM ROSENDORFF, M.D., DIRECTOR.

10:38AM 15 SO LET'S GO TO THE 2015 INSPECTION.

10:38AM 16 SO, FIRST OF ALL, THE GOVERNMENT CALLED MS. BENNETT, BUT
10:38AM 17 AS YOU MIGHT REMEMBER FROM HER CROSS-EXAMINATION, SHE
10:38AM 18 REPEATEDLY CLAIMED NOT TO KNOW ANYTHING ABOUT THE FINGERSTICK
10:38AM 19 ASSAY PART OF THE INSPECTION, AND THE REASON FOR THAT WAS SHE
10:39AM 20 DID NOT SURVEY THE FINGERSTICK PART OF THE LABORATORY. SHE DID
10:39AM 21 NOT EXAMINE ANY OF THE FINGERSTICK TESTING ON THE MODIFIED
10:39AM 22 PREDICATE DEVICES.

10:39AM 23 SO THEY CALLED MS. BENNETT WHO DIDN'T KNOW ABOUT WHAT
10:39AM 24 SEEMS TO BE A KEY ISSUE IN THIS CASE WHICH WAS THE FINGERSTICK
10:39AM 25 TESTING, BUT INSTEAD THEY CALLED SOMEONE WHO DIDN'T ACTUALLY DO

10:39AM 1 THAT, RATHER THAN MR. YAMAMOTO.

10:39AM 2 AND I THINK WE CAN SEE THE REASON WHY. IN THIS TEXT
10:39AM 3 MESSAGE STRING, MR. BALWANI IS REPORTING THAT "GARY IS TRYING
10:39AM 4 TO BE PRO THERANOS."

10:39AM 5 SO THE LAST THING THE GOVERNMENT WANTS IS A PRO THERANOS
10:39AM 6 WITNESS ON THE STAND.

10:39AM 7 NOW, YOU SAW DURING TRIAL THERE WERE SOME TEXT MESSAGES
10:39AM 8 THAT GO ON DURING THE INSPECTION. YOU KNOW, CLEARLY HAVING
10:39AM 9 INSPECTORS COME IS GOING TO BE A LITTLE STRESSFUL, BUT HAVING
10:39AM 10 INSPECTORS FINDING DEFICIENCIES IS EVEN GOING TO BE MORE
10:39AM 11 STRESSFUL, SO NOT SURPRISINGLY THERE'S SOME TEXT MESSAGES THAT
10:40AM 12 GO ON DURING THIS PROCESS. I THINK NATURALLY ANYBODY WOULD BE
10:40AM 13 FOCUSSED ON THIS.

10:40AM 14 AND ON SEPTEMBER 22ND, ELIZABETH HOLMES WRITES, "CAN WE
10:40AM 15 GET SOMEONE HERE TO SUPPLEMENT/UPDATE/HELP EXPLAIN?"

10:40AM 16 AND THEN LATER IN THE STRING ON SEPTEMBER 23RD, THIS IS
10:40AM 17 DURING THE INSPECTION, MR. BALWANI WRITES, "DANIEL HAS NOTHING
10:40AM 18 READY.

10:40AM 19 "TOLD ME EVERYTHING IS IN THE BINDERS.

10:40AM 20 "NOT THERE."

10:40AM 21 SO MR. BALWANI IS CLEARLY SURPRISED. HE THOUGHT HIS TEAM
10:40AM 22 WAS READY, THEY HAD PREPARED FOR THIS, THEY HAD THE
10:40AM 23 DOCUMENTATION ORGANIZED IN BINDERS.

10:40AM 24 INSTEAD, HE'S FINDING TO HIS CHAGRIN THAT IT'S NOT. SO
10:40AM 25 HE'S DISAPPOINTED.

10:40AM 1 AND, YOU KNOW, THIS ISSUE ABOUT MS. BENNETT HAD TROUBLE
10:40AM 2 GETTING DOCUMENTS. WELL, THAT MAY BE THE CASE.

10:40AM 3 BUT MR. BALWANI WAS SURPRISED AT THAT AND HE THOUGHT THAT
10:40AM 4 THE TEAM HAD IT ORGANIZED.

10:40AM 5 BUT LET'S TALK ABOUT WHAT HAPPENED THAT SAME DAY.

10:41AM 6 SO, REMEMBER, THIS IS ANOTHER TEXT MESSAGE. SO THIS IS
10:41AM 7 ELIZABETH HOLMES AND MR. BALWANI. THE GOVERNMENT CLAIMS THESE
10:41AM 8 WERE CONSPIRATORS WHO WERE WORKING TOGETHER TO COMMIT FRAUD ON
10:41AM 9 PATIENTS AND INVESTORS, AND THERE'S NO ONE ELSE LISTENING HERE
10:41AM 10 AS FAR AS I KNOW. THESE ARE JUST TEXT MESSAGES THAT THEY'RE
10:41AM 11 SENDING, RIGHT?

10:41AM 12 AND ELIZABETH HOLMES WRITES, "YOU MAY WANT TO WALK HIM
10:41AM 13 THROUGH THE REPORTS WITH CHINMAY BEFORE HE LEAVES. I CAN
10:41AM 14 QUICKLY BRIEF YOU ON THIS. YOU COULD GET THROUGH THEM AND GET
10:41AM 15 IT DONE. DATA IS GOOD. FORMATTING MAY BE DIFFERENT THAN WHAT
10:41AM 16 HE IS USED TO BUT SUBSTANCE IS THERE."

10:41AM 17 SO THAT'S WHAT MS. HOLMES IS TELLING MR. BALWANI IN A
10:41AM 18 PRIVATE TEXT MESSAGE. NOT, BOY, THE JIG IS UP, INSPECTORS ARE
10:41AM 19 HERE, THEY FOUND THE PROBLEMS WE ALWAYS KNEW ABOUT.

10:41AM 20 SHE SAYS, NO, THE DATA IS GOOD, THE SUBSTANCE IS THERE.

10:41AM 21 SO THIS IS -- THE GOVERNMENT CLAIMS THESE TEXT MESSAGES
10:41AM 22 ARE EVIDENCE OF SOME KIND OF CONSPIRACY.

10:42AM 23 THIS IS THE OPPOSITE OF THAT. IN A PRIVATE TEXT MESSAGE,
10:42AM 24 IF THAT WAS REALLY WHAT THEY WERE DOING, THIS WOULD NOT BE THE
10:42AM 25 TEXT MESSAGE THAT THEY WOULD BE SENDING.

10:42AM 1 NOW, EARLIER IN SEPTEMBER, AND THE GOVERNMENT SHOWED THIS
10:42AM 2 TO YOU, TOO, MR. BALWANI WRITES, "WE CAN BUILD THIS BUSINESS
10:42AM 3 THEY SOFTWARE AND JP AND RUN CIRCLES AROUND OTHERS AND FDA BY
10:42AM 4 MANIPULATING THEIR GAME."

10:42AM 5 OKAY. WHAT DOES THAT MEAN? ARE PEOPLE LOOKING FOR WAYS
10:42AM 6 TO DEAL WITH REGULATORS? OF COURSE. I MEAN, THAT IS BUSINESS
10:42AM 7 VERSUS REGULATORS. YOU KNOW, THERE'S ALWAYS ISSUES ABOUT HOW
10:42AM 8 TO DEAL WITH REGULATORS.

10:42AM 9 BUT IN THIS CASE WHAT MR. BALWANI SAYS NEXT IS, "WE JUST
10:42AM 10 NEED A FRESH START AND A GIANT STEP BACK. LIKE WE DISCUSSED,"
10:42AM 11 IT COULD BE LAST NIGHT.

10:42AM 12 AND IT SAYS, "DO CTN PMA ON OUR TERMS AND THEN GO
10:43AM 13 INTELLIGENT ON MARKETING."

10:43AM 14 AND THEN LATER ON SEPTEMBER 2ND, ELIZABETH HOLMES WRITES,
10:43AM 15 "WITH PMA YOU CAN MARKET WHATEVER YOU WANT."

10:43AM 16 SO MS. BENNETT EXPLAINED A LITTLE BIT ABOUT PMA, IT'S A
10:43AM 17 PREMARKET APPROVAL. IT'S ANOTHER FILING YOU MAKE WITH THE FDA.

10:43AM 18 SO IF SOMEONE WANTS TO RUN CIRCLES AROUND THE FDA, IT
10:43AM 19 SEEMS THAT MR. BALWANI'S PLAN IS TO SUBMIT ANOTHER APPROVAL
10:43AM 20 DOCUMENT CALLED A PREMARKET APPROVAL FOR THE FDA FOR
10:43AM 21 THERANOS'S TECHNOLOGY. AND I'M NOT SURE HOW THAT RUNS CIRCLES,
10:43AM 22 BUT THAT SEEMS TO BE WHAT HE'S TALKING ABOUT.

10:43AM 23 AND IF YOU THINK THAT YOUR LABORATORY AND YOUR TECHNOLOGY
10:43AM 24 IS TERRIBLE AND THAT IT'S NEVER GOING TO GO ANYWHERE, THE LAST
10:43AM 25 THING YOU DO IS SUBMIT MORE APPROVAL DOCUMENTS.

10:43AM 1 REMEMBER A FEW MONTHS BEFORE THIS, THERANOS HAD GOTTEN
10:44AM 2 APPROVAL FROM THE FDA FOR HSV-1 ASSAY RUNNING ON THE SYSTEM.

10:44AM 3 SO THE IDEA THAT THIS MEANS ANYTHING RELEVANT TO THIS
10:44AM 4 CRIMINAL CASE IS OUTLANDISH.

10:44AM 5 OKAY. I WANT TO MOVE TO THE TOPIC THOUGH OF THE CMS
10:44AM 6 SURVEY REPORT ITSELF, AND YOU MIGHT REMEMBER DURING THE
10:44AM 7 EXAMINATION OF MS. BENNETT, THE GOVERNMENT SPENT SOME TIME ON
10:44AM 8 THAT DOCUMENT. IT'S EXHIBIT 4621. IT'S A LENGTHY DOCUMENT.
10:44AM 9 IT'S ALL OF THE DEFICIENCIES THAT MS. BENNETT AND HER
10:44AM 10 COLLEAGUE, MR. YAMAMOTO, FOUND AT THERANOS.

10:44AM 11 AND I JUST WANT TO WALK YOU THROUGH SOME OF THEM SO THAT
10:44AM 12 IT'S CLEAR WHAT ACTUALLY HAPPENED.

10:44AM 13 SO YOU MIGHT REMEMBER DURING THE EXAMINATION OF
10:44AM 14 MS. BENNETT, SHE TALKED ABOUT SOMETHING CALLED AN IMMEDIATE
10:44AM 15 JEOPARDY, AND MS. BENNETT TALKED ABOUT WHAT THAT WAS.

10:44AM 16 AND THERE ARE DIFFERENT SORT OF LEVELS OF VIOLATION THAT
10:44AM 17 CMS COULD FIND. ONE IS THE HIGHEST LEVEL, THE MOST SERIOUS IS
10:45AM 18 IMMEDIATE JEOPARDY.

10:45AM 19 ANOTHER LEVEL WOULD BE CONDITION LEVEL VIOLATIONS, AND
10:45AM 20 THEN THERE'S SOMETHING CALLED STANDARD LEVEL VIOLATIONS.
10:45AM 21 THAT'S THE CMS LINGO, IF YOU WILL, RIGHT?

10:45AM 22 SO THE GOVERNMENT POINTED TO THE IMMEDIATE JEOPARDY
10:45AM 23 BECAUSE THAT'S KIND OF A SHINY OBJECT. LIKE, YOU KNOW, LOOK,
10:45AM 24 IMMEDIATE JEOPARDY COULD MEAN THAT PEOPLE COULD BE POTENTIALLY
10:45AM 25 BE SUBJECT TO DEATH OR SERIOUS BODILY INJURY, SO THAT'S REALLY

10:45AM 1 SERIOUS.

10:45AM 2 THE GOVERNMENT WANTED TO HIGHLIGHT THAT FOR YOU AT TRIAL
10:45AM 3 BECAUSE IT SOUNDS REALLY BAD, AND IT IS BAD. I MEAN, NO LAB
10:45AM 4 WANTS TO GET AN IMMEDIATE JEOPARDY, AND THAT'S A REGULATORY
10:45AM 5 VIOLATION THAT NOBODY WANTS AND IT'S SERIOUS AND IT SHOULD BE
10:45AM 6 TAKEN SERIOUSLY.

10:45AM 7 BUT I WANT TO JUST MAKE SURE WE LEVEL SET HERE AND EXPLAIN
10:45AM 8 EXACTLY WHAT THAT IMMEDIATE JEOPARDY WAS, OKAY?

10:45AM 9 SO THIS HAD TO DO WITH AN ASSAY CALLED PT INR, AND THAT IS
10:45AM 10 AN ASSAY THAT IS USED TO MONITOR PEOPLE WHO ARE ON BLOOD
10:45AM 11 THINNERS, LIKE WARFARIN AND THINGS LIKE THAT.

10:45AM 12 SO HERE'S WHAT ACTUALLY HAPPENED, AND THERE ARE TWO
10:46AM 13 ASPECTS TO THE PT INR AND IMMEDIATE JEOPARDY THAT MS. BENNETT
10:46AM 14 FOUND.

10:46AM 15 THE FIRST ONE IS THIS ISSUE WITH REFRIGERATION.

10:46AM 16 SO DADE INNOVIN, WHICH IS A COMPANY THAT SUPPLIED A
10:46AM 17 PARTICULAR REAGENT, SENT A BATCH OR A LOT OF REAGENTS TO
10:46AM 18 THERANOS, SO THIS COMPANY CALLED DADE.

10:46AM 19 AND USUALLY, AND YOU CAN SEE THAT IN SECTION B THAT IS ON
10:46AM 20 THE SCREEN, THE GENERAL SUPERVISOR THAT MS. BENNETT TALKED TO
10:46AM 21 STATED THAT THE PACKAGE INSERTS WITH THE LOT WERE USUALLY
10:46AM 22 WHITE. OKAY?

10:46AM 23 THE PACKAGE INSERT FOR THIS PARTICULAR LOT NUMBER, AND IT
10:46AM 24 HAS THE LOT NUMBER THERE, WERE PINK. IT INDICATED THAT THE
10:46AM 25 MANUFACTURER HAD INCLUDED SPECIAL INSTRUCTIONS FOR THE SPECIFIC

10:46AM 1 LOT NUMBER OF THIS REAGENT CALLED INNOVIN.

10:46AM 2 SO THERE WAS SOMETHING DIFFERENT ABOUT THIS LOT, AND THE
10:46AM 3 MANUFACTURER WAS TRYING TO BRING IT TO ITS CUSTOMER,
10:46AM 4 THERANOS'S, ATTENTION WITH A PINK DOCUMENT, A PINK PACKAGE
10:46AM 5 INSERT.

10:46AM 6 NEXT. REVIEW OF THE PACKAGE INSERT, THE PI, REVEALED AN
10:47AM 7 IMPORTANT NOTE THAT THIS SPECIFIC LOT NUMBER WAS ONLY STABLE
10:47AM 8 FOR TWO DAYS INSTEAD OF TEN DAYS AFTER RECONSTITUTION WHEN
10:47AM 9 STORED AT 2-8 DEGREES CELSIUS.

10:47AM 10 SO THERE WAS SOMETHING DIFFERENT ABOUT THIS LOT. USUALLY
10:47AM 11 THE MANUFACTURER, DADE, SAYS YOU CAN STORE THIS FOR TEN DAYS.

10:47AM 12 IN THIS CASE THERE WAS SOMETHING STRANGE ABOUT THE LOT
10:47AM 13 THAT THEY MANUFACTURED -- NOT THERANOS, DADE -- WELL, IT LOOKS
10:47AM 14 LIKE IT'S ONLY STABLE FOR TWO DAYS.

10:47AM 15 AND THEN IT SAYS IN PART E THERE, THE CURRENT VIAL OF
10:47AM 16 INNOVIN REAGENT WAS OBSERVED IN THE 2 TO 8 DEGREE CELSIUS
10:47AM 17 REFRIGERATOR WITH A FIVE-DAY EXPIRATION DATE.

10:47AM 18 SO THERANOS HAD PUT IT DOWN FOR A FIVE-DAY EXPIRATION.
10:47AM 19 NORMALLY YOU COULD KEEP IT AS LONG AS TEN DAYS, AND THERANOS
10:47AM 20 WOULD ONLY DO FIVE. BUT THIS PACKAGE INSERT SAID ONLY KEEP IT
10:47AM 21 FOR TWO DAYS.

10:47AM 22 SO MS. BENNETT FOUND THIS IN THE FRIDGE. I THINK SHE
10:48AM 23 ACTUALLY SAID THAT IT'S LIKE IF YOU HAVE SPILLED MILK THAT IS
10:48AM 24 PAST THE EXPIRATION DATE, YOU WILL DON'T WANT TO DRINK THIS
10:48AM 25 MILK.

10:48AM 1 BUT THEN SHE SAID SHE DID DRINK MILK PAST THIS EXPIRATION
10:48AM 2 DATE. DO YOU REMEMBER THAT FROM MS. BENNETT?

10:48AM 3 ANYWAY, THAT'S WHAT THIS WAS ABOUT.

10:48AM 4 AND THEN IT SAYS THAT, IN PART G THERE, THE GENERAL
10:48AM 5 SUPERVISOR CONFIRMED ON SEPTEMBER 23RD, 2015, THAT THE CHANGE
10:48AM 6 IN STORAGE AND STABILITY OF THE INNOVIN REAGENT HAD NOT BEEN
10:48AM 7 IDENTIFIED FROM MARCH 2015 THROUGH SEPTEMBER 2015.

10:48AM 8 SO THEY MISSED THE PACKAGE INSERT, AND THEIR JOB WAS TO
10:48AM 9 CATCH THOSE THINGS. IT WAS PINK IT LOOKS LIKE.

10:48AM 10 BUT THE IDEA THAT MR. BALWANI KNOWS ANYTHING ABOUT A
10:48AM 11 PACKAGE INSERT THAT'S PINK OR WHITE OR WHETHER IT'S IN THE
10:48AM 12 FRIDGE FOR TWO DAYS OR TEN DAYS OR FIVE DAYS, THAT'S
10:48AM 13 OUTLANDISH.

10:48AM 14 AND THAT'S ONE PART OF THE PT INR IMMEDIATE JEOPARDY THAT
10:48AM 15 THE GOVERNMENT WAS PRESENTING TO YOU AS THIS MAJOR PROBLEM WITH
10:48AM 16 THE LAB THAT SOMEHOW MR. BALWANI IS RESPONSIBLE FOR.

10:49AM 17 BUT THERE'S ANOTHER PART OF PT INR, TOO, JUST TO BE
10:49AM 18 COMPLETE.

10:49AM 19 FIRST OF ALL, JUST TO MAKE CLEAR WHAT WE'RE TALKING ABOUT,
10:49AM 20 THE PT INR TESTING THAT MS. BENNETT WAS TALKING ABOUT WAS NOT
10:49AM 21 ON A THERANOS DEVICE.

10:49AM 22 THE GOVERNMENT SHOWED YOU AN EMAIL EARLIER ABOUT PT INR,
10:49AM 23 AND AT ONE POINT IT HAD BEEN, BUT AT THIS POINT MS. BENNETT IS
10:49AM 24 TALKING ABOUT PT INR, THAT ASSAY, RUNNING ON AN FDA APPROVED
10:49AM 25 COMMERCIAL DEVICE.

10:49AM 1 AND SHE'S ASKED THE QUESTION, AND SHE SAYS YES. AND
10:49AM 2 THAT'S WHAT WAS GOING ON.

10:49AM 3 AND THERE'S BEEN NO EVIDENCE IN THIS CASE THAT THERE WAS
10:49AM 4 ANYTHING WRONG WITH THAT DEVICE, OR IT'S NOT CAPABLE OF
10:49AM 5 PRODUCING RESULTS OR ANYTHING LIKE THAT.

10:49AM 6 IF WE GO TO THE NEXT SLIDE.

10:49AM 7 SO THIS IS THE OTHER PART OF THE PT INR IMMEDIATE JEOPARDY
10:49AM 8 STORY. SO IT TURNS OUT THAT THE LAB STAFF IS SUPPOSED TO ENTER
10:49AM 9 THIS PARTICULAR VALUE INTO, IN THIS CASE, THE FDA APPROVED
10:50AM 10 COMMERCIAL DEVICE, AND IT'S CALLED AN INR VALUE.

10:50AM 11 SO THEY'RE SUPPOSED TO ENTER THIS VALUE, AND THAT IS BASED
10:50AM 12 ON A STUDY.

10:50AM 13 AND ONCE THEY ENTER THAT VALUE, THEN THEY COULD GO FORWARD
10:50AM 14 WITH THE PATIENT TESTING FOR THIS PARTICULAR ASSAY, PT INR.

10:50AM 15 WELL, WHAT MS. BENNETT FOUND IS THAT THERE'S NO
10:50AM 16 DOCUMENTATION OF THAT VALUE AND WHETHER IT HAD BEEN ENTERED.

10:50AM 17 IT DOESN'T MEAN IT WASN'T ENTERED. BUT AS MS. BENNETT
10:50AM 18 SAID, YOU KNOW, IN A LAB WHEN YOU'RE DOING AN INSPECTION, IF
10:50AM 19 SOMETHING IS NOT WRITTEN DOWN AND DOCUMENTED, THEN IT BASICALLY
10:50AM 20 DOESN'T EXIST, RIGHT? AS FAR AS AN INSPECTOR IS CONCERNED,
10:50AM 21 THAT'S REASONABLE.

10:50AM 22 SO MS. BENNETT SAYS, WELL, THERE'S NO DOCUMENTATION OF THE
10:50AM 23 VALUE HAVING BEEN ENTERED, SO SHE THEN TOOK THE MORE RECENT
10:50AM 24 VALUE FROM SEPTEMBER AND REDID THE CALCULATIONS.

10:50AM 25 AND THAT'S THIS DOCUMENT THAT YOU'RE SEEING AS PART OF

10:50AM 1 EXHIBIT 20619. AND THIS IS THE RECALCULATIONS THAT MS. BENNETT
10:50AM 2 DID.

10:50AM 3 SHE FOUND THAT THERE WERE SOME DIFFERENCES IF YOU USE THE
10:51AM 4 MORE RECENT INR NUMBER VERSUS THE NUMBER THAT MAY HAVE BEEN
10:51AM 5 USED BACK IN MARCH BUT HAD NOT BEEN DOCUMENTED.

10:51AM 6 SO MS. BENNETT, YOU KNOW, PERFECTLY FINE, SHE FOUND THIS
10:51AM 7 ISSUE AND BROUGHT IT TO THE ATTENTION OF THERANOS.

10:51AM 8 AND AGAIN, THOUGH, SHOULD A LAB DOCUMENT THE VALUE THAT
10:51AM 9 THEY ENTER? OF COURSE THEY SHOULD.

10:51AM 10 BUT IS THAT SOMETHING THAT MR. BALWANI IS LOOKING AT?
10:51AM 11 HE'S NOT THE PERSON ENTERING THE VALUE. THEY'RE SOP'S. HE'S
10:51AM 12 EXPECTING THE LAB STAFF TO DO THIS.

10:51AM 13 AND THIS LOOKS LIKE A PROBLEM, A REGULATORY PROBLEM, BUT
10:51AM 14 NOT A CRIMINAL VIOLATION THAT MR. BALWANI IS SOMEHOW
10:51AM 15 RESPONSIBLE FOR.

10:51AM 16 LET'S TALK ABOUT WHAT HAPPENED WITH PT INR. SO HERE'S THE
10:51AM 17 QUESTION TO MS. BENNETT ON DIRECT: DID YOU ALERT MR. BALWANI
10:51AM 18 TO THE PROBLEMS WITH PT INR IN THE SEPTEMBER PORTION OF THE
10:51AM 19 EXAM?

10:52AM 20 YOU MIGHT REMEMBER THERE WAS A SEPTEMBER PORTION OF THE
10:52AM 21 INSPECTION AND THEN CMS CAME BACK IN NOVEMBER.

10:52AM 22 AND SHE SAID YES, SHE ALERTED HIM.

10:52AM 23 AND WHEN YOU CAME BACK IN NOVEMBER, WHAT HAD HAPPENED?

10:52AM 24 SHE SAID NOTHING.

10:52AM 25 SO THAT WAS HER TESTIMONY ON DIRECT.

10:52AM 1 THAT WASN'T TRUE.

10:52AM 2 SO ON CROSS, SHE IS SHOWN A DOCUMENT TO REFRESH HER
10:52AM 3 MEMORY, AND THEN SHE HAD TO SAY, YOU KNOW, SHE PROBABLY JUST
10:52AM 4 FORGOT ABOUT THAT.

10:52AM 5 BUT THERANOS PAUSED IT'S TESTING ON PT INR.

10:52AM 6 SHE SAYS YES.

10:52AM 7 SO WHEN THIS PROBLEM WAS IDENTIFIED, THERANOS STOPPED THE
10:52AM 8 TESTING UNTIL THEY COULD FIGURE THINGS OUT, AND EVEN THOUGH SHE
10:52AM 9 INITIALLY SAID THEY DID NOTHING, ACTUALLY THEY DID TAKE ACTION
10:52AM 10 IN RESPONSE TO CMS.

10:52AM 11 LET'S MOVE TO THE REPORT, PAST THE PT INR AND THE
10:52AM 12 IMMEDIATE JEOPARDY, BUT JUST LOOKING AT THE REPORT AS A WHOLE,
10:52AM 13 AND IT'S QUITE LONG. IT'S EXHIBIT 4621.

10:52AM 14 WHAT I'VE DONE HERE IS ORGANIZED THE DIFFERENT REGULATORY
10:52AM 15 VIOLATIONS INTO FOUR BUCKETS, AND I JUST WANT TO TALK ABOUT
10:53AM 16 THEM ONE AT A TIME.

10:53AM 17 SO THESE ARE ALL OF THE REGULATORY VIOLATIONS THAT ARE
10:53AM 18 DISCUSSED. AND YOU MIGHT REMEMBER THIS, THEY ARE CALL D-TAGS,
10:53AM 19 EACH LITTLE SECTION OF THE CMS REPORT.

10:53AM 20 THE FIRST ONE HAS TO DO WITH TRAINING DOCUMENTATION.

10:53AM 21 AND THIS VIOLATION, THIS GROUP OF VIOLATIONS, THIS BUCKET,
10:53AM 22 RELATES TO TESTING PERSONNEL FILES WHERE THERE WAS MISSING
10:53AM 23 DOCUMENTATION OF REQUIRED TRAINING.

10:53AM 24 SO LAB STAFF IS SUPPOSED TO UNDERGO PERIODIC TRAINING AND
10:53AM 25 THAT IS SUPPOSED TO BE DOCUMENTED, AND THERE WAS SOME

10:53AM 1 DEFICIENCIES IN THE DOCUMENTATION FOR TRAINING.

10:53AM 2 AGAIN, THE LAB SHOULD KEEP IT AND DO IT RIGHT AND THERE
10:53AM 3 ARE REGULATIONS HERE THAT SHOULD BE FOLLOWED. BUT AGAIN THIS
10:53AM 4 IS A REGULATORY VIOLATION AND I'M GOING TO TALK MORE ABOUT THAT
10:53AM 5 IN A MINUTE.

10:53AM 6 GENERAL AND TECHNICAL SUPERVISORS DOCUMENTATION. THIS IS
10:53AM 7 RELATING TO MORE PARTICULAR TRAINING FOR GENERAL AND TECHNICAL
10:53AM 8 SUPERVISORS THAT THEY NEED TO HAVE DOCUMENTED. AND AGAIN, WE
10:54AM 9 DON'T KNOW WHETHER THEY DID THE TRAINING OR NOT, IT'S JUST THAT
10:54AM 10 IT WASN'T DOCUMENTED.

10:54AM 11 SO AS FAR AS MS. BENNETT IS CONCERNED, THAT DIDN'T HAPPEN.
10:54AM 12 SO THAT'S ANOTHER GROUP OF VIOLATIONS THAT SHE FOUND.

10:54AM 13 THE NEXT ONE IS LAB DIRECTORS. AND IT'S IMPORTANT TO NOTE
10:54AM 14 THAT THE LAB DIRECTOR'S VIOLATION SPANS 2014 AND 2015. SO IT'S
10:54AM 15 BOTH DR. ROSENDORFF AND DR. DHAWAN, WHO WAS THE LAB DIRECTOR ON
10:54AM 16 THE LICENSE AFTER DR. ROSENDORFF LEFT.

10:54AM 17 AND SO THIS VIOLATION INVOLVING DR. ROSENDORFF AND
10:54AM 18 DR. DHAWAN HAD TO DO WITH ESSENTIALLY THAT. BECAUSE THERE WERE
10:54AM 19 OTHER VIOLATIONS FOUND, BY DEFINITION THE LAB DIRECTORS WERE
10:54AM 20 NOT PROPERLY SUPERVISING THE STAFF AND THE TRAINING AND ALL OF
10:54AM 21 THE OTHER REQUIREMENTS. SO THAT'S WHAT THIS GROUP IS.

10:54AM 22 AND THEN THE FINAL ONE WAS ANALYTIC SYSTEMS. LET'S SPEND
10:54AM 23 A MOMENT ON THAT.

10:54AM 24 SO THE ANALYTIC SYSTEMS BUCKET HAS TO DO WITH QC
10:54AM 25 PROCEDURES, INCLUDING ON EDISON.

10:55AM 1 AND WHAT MS. BENNETT FOUND WAS THAT IN SOME CASES, EVEN
10:55AM 2 THOUGH THERE WAS A STANDARD OPERATING PROCEDURE FOR RUNNING QC,
10:55AM 3 AND WE TALKED ABOUT THAT YESTERDAY ABOUT HOW IF A DEVICE FAILS
10:55AM 4 QC THEN YOU'RE NOT SUPPOSED TO USE IT FOR PATIENT TESTING, THAT
10:55AM 5 WAS THE PROCEDURE.

10:55AM 6 BUT IN SOME CASES MS. BENNETT FOUND THAT THAT DIDN'T --
10:55AM 7 THAT WASN'T FOLLOWED PROPERLY. FOR EXAMPLE, IF YOU GO TO
10:55AM 8 EXHIBIT 4621, YOU'LL SEE THAT THERE ARE TIMES WHEN THE QC RUN
10:55AM 9 WITH A DEVICE THAT PASSES IS GOOD FOR 24 HOURS.

10:55AM 10 BUT THEN THEY DO ANOTHER QC RUN THE NEXT DAY, BUT THE
10:55AM 11 TESTING IS DONE LIKE ON THE 24 AND A HALF HOUR, OR THE 25TH
10:55AM 12 HOUR, SO IT'S NOT WITHIN THE 24 HOURS.

10:55AM 13 AND MS. BENNETT, YOU KNOW, FINDS THOSE VIOLATIONS, WHICH
10:55AM 14 IS HER JOB, AND NOTES THOSE.

10:55AM 15 AND THEN THERE ARE OTHER VIOLATIONS INVOLVING
10:55AM 16 DR. ROSENDORFF WHEN HE DID THE VALIDATION REPORTS. THERE HAD
10:55AM 17 BEEN AN EARLIER VALIDATION PLAN THAT LAID OUT HOW THE
10:55AM 18 VALIDATION WAS SUPPOSED TO BE DONE, AND MS. BENNETT FOUND THAT
10:56AM 19 DR. ROSENDORFF DIDN'T FOLLOW THOSE IN ALL RESPECTS. SO THAT'S
10:56AM 20 ANOTHER VIOLATION.

10:56AM 21 AND THERE WAS ALSO A VIOLATION THAT MS. BENNETT FOUND
10:56AM 22 ABOUT QC TRENDING. SO IT WASN'T JUST THE DAILY QC, BUT THE LAB
10:56AM 23 IS SUPPOSED TO LOOK AT HOW QC IS TRENDING OVER TIME, AND SHE
10:56AM 24 DIDN'T -- SHE FOUND THAT THERE WASN'T AN ADEQUATE PLAN TO DEAL
10:56AM 25 WITH QC TRENDS OVER TIME.

10:56AM 1 SO, AGAIN, THESE ARE VIOLATIONS THAT ARE SERIOUS AND
10:56AM 2 SHOULD BE TAKEN SERIOUSLY, BUT THEY'RE NOT THE STUFF OF FEDERAL
10:56AM 3 CRIMINAL CHARGES.

10:56AM 4 AND JUDGE DAVILA IS GOING TO TALK TO YOU ABOUT THAT WHEN
10:56AM 5 HE GIVES HIS INSTRUCTIONS, AND I WANT TO PUT THAT ON THE
10:56AM 6 SCREEN.

10:56AM 7 SO THIS INSTRUCTION THAT JUDGE DAVILA WILL GIVE YOU IS
10:56AM 8 THAT THERE IS EVIDENCE IN THIS CASE OF VIOLATIONS OF
10:56AM 9 REGULATIONS AND INDUSTRY STANDARDS, AND YOU MAY CONSIDER THAT
10:56AM 10 EVIDENCE IN ASSESSING WHETHER THE GOVERNMENT HAS PROVED EACH OF
10:56AM 11 THE COUNTS.

10:56AM 12 HOWEVER, YOU MAY NOT FIND MR. BALWANI LIABLE FOR ANY OF
10:57AM 13 THE OFFENSES ALLEGED IN THE INDICTMENT MERELY BECAUSE HE OR
10:57AM 14 THERANOS MAY HAVE VIOLATED FEDERAL OR STATE REGULATIONS OR
10:57AM 15 BECAUSE MR. BALWANI OR THERANOS MAY HAVE ENGAGED IN NEGLIGENT
10:57AM 16 PRACTICES OR VIOLATED INDUSTRY STANDARDS RELATED TO LABORATORY
10:57AM 17 TESTING OR MEDICAL DEVICES.

10:57AM 18 SO YOU CANNOT FIND GUILT IN THIS CASE BECAUSE THERE WAS
10:57AM 19 SOME REGULATORY VIOLATIONS.

10:57AM 20 NOW, MIND YOU, THE REGULATORY VIOLATIONS THAT WE'RE
10:57AM 21 TALKING ABOUT ARE NOT THINGS THAT WERE KNOWN TO MR. BALWANI.
10:57AM 22 HE'S NOT IN THERE ENTERING VALUES INTO THE MACHINE OR DECIDING
10:57AM 23 HOW LONG REAGENTS SHOULD STAY IN THE FRIDGE.

10:57AM 24 BUT IN ANY EVENT, REGARDLESS OF THE VIOLATIONS, EVEN IF
10:57AM 25 MR. BALWANI WAS SOMEHOW KNOWLEDGEABLE, YOU WOULD NOT BE ABLE TO

10:57AM 1 FIND GUILT BASED MERELY ON THE FACT THAT THERE WERE REGULATORY
10:57AM 2 VIOLATIONS.

10:57AM 3 THIS IS NOT A CASE ABOUT VIOLATIONS OF REGULATIONS. THOSE
10:57AM 4 ARE IMPORTANT, BUT THAT'S NOT WHAT WE ARE DOING HERE.

10:57AM 5 THIS IS ABOUT INTENT TO DECEIVE, INTENT TO TAKE PATIENT'S
10:57AM 6 MONEY THROUGH DECEPTION, KNOWINGLY RUNNING A LAB THAT WAS
10:58AM 7 GIVING PATIENTS INACCURATE RESULTS AND TRYING TO TAKE THEIR
10:58AM 8 MONEY THROUGH THAT PROCESS.

10:58AM 9 AND THAT'S NOT -- REGULATORY VIOLATIONS ARE A DIFFERENT
10:58AM 10 SUBJECT. THAT IS WHAT JUDGE DAVILA WILL TELL YOU.

10:58AM 11 NOW, IF WE GO FURTHER, THOUGH, I WANT TO TALK ABOUT WHAT
10:58AM 12 IS REALLY IMPORTANT IS THESE HEAD-TO-HEAD COMPARISONS OF THE
10:58AM 13 THERANOS TECHNOLOGY AND AGAINST THE FDA COMMERCIAL TECHNOLOGY.

10:58AM 14 SO IF WE GO TO THE NEXT SLIDE.

10:58AM 15 THESE ARE THE AAP, ALTERNATIVE ASSESSMENT PROCEDURE,
10:58AM 16 REPORTS THAT WERE PROVIDED TO CMS.

10:58AM 17 AS I SAID YESTERDAY, THIS IS REALLY WHERE THE RUBBER HITS
10:58AM 18 THE ROAD. YOU KNOW, PROFICIENCY TESTING, DOES YOUR SYSTEM
10:58AM 19 WORK? IS IT -- HOW IS IT DOING IN THESE HEAD-TO-HEAD
10:58AM 20 COMPARISONS?

10:58AM 21 AND I JUST WANT TO WALK THROUGH THIS DOCUMENT. THIS IS
10:58AM 22 EXHIBIT 20619, IF YOU WANT TO WRITE THAT DOWN.

10:59AM 23 SO WHAT THIS HAS IS THE DATES THAT THE AAP WAS PERFORMED
10:59AM 24 AND THE RESULTS OF THAT AAP.

10:59AM 25 AND I JUST WANT TO JUMP TO AN ISSUE REAL QUICKLY.

10:59AM 1 IF WE CAN GO TO THE BOTTOM OF THE DOCUMENT, MR. ALLEN.
10:59AM 2 YOU CAN SEE THAT THIS DOCUMENT IS SIGNED, NOT BY
10:59AM 3 MR. BALWANI, BUT IT'S SIGNED BY DR. SAKSENA, VERIFIED BY
10:59AM 4 GURBIR SIDHU, SIGNED BY DR. DHAWAN. AND THEY SIGNED IT IN
10:59AM 5 NOVEMBER.

10:59AM 6 AND YOU MIGHT REMEMBER AN HOUR OR SO AGO I SHOWED YOU
10:59AM 7 DR. ROSENDORFF'S PROTOCOL FOR AAP, THAT WAS EXHIBIT 9939 AND
10:59AM 8 9940. AND IN THOSE EXHIBITS IT SAYS THAT THE LABORATORY
10:59AM 9 DIRECTOR IS RESPONSIBLE FOR REVIEWING THE AAP.

10:59AM 10 WHAT MS. BENNETT FOUND, AND SHE TESTIFIED ABOUT THIS, IS
10:59AM 11 THAT SHE DIDN'T HAVE ANY REASON TO DOUBT THE TIMES THAT THE AAP
10:59AM 12 TEST WAS PERFORMED, AND IN THIS CASE IT WAS AUGUST OF 2014.

11:00AM 13 BUT SHE ENFORCED THE REGULATION, THAT, WELL, YOU HAVE TO
11:00AM 14 HAVE THE LAB DIRECTOR SIGN OFF, REVIEW IT AT THE TIME IT WAS
11:00AM 15 DONE. SO THAT WAS THE VIOLATION THAT MS. BENNETT FOUND.

11:00AM 16 BUT PUTTING ASIDE THAT REGULATORY VIOLATION, THE EVIDENCE
11:00AM 17 IN THIS CASE IS THESE AAP TESTS WERE TO BE -- THIS IS PART OF
11:00AM 18 PROFICIENCY TESTING. YOU SAW A FEW MINUTES AGO, MAYBE IT'S AN
11:00AM 19 HOUR NOW, DR. ROSENDORFF REFERRED TO AAP IN LOOKING AT A
11:00AM 20 PHYSICIAN INQUIRY AND HOW TO RESPOND TO THAT.

11:00AM 21 SO WHEN YOU GO THROUGH THIS, YOU CAN SEE THEY'RE NOT
11:00AM 22 100 PERCENT IN ALL CASES. REMEMBER 80 PERCENT IS A PASS.
11:00AM 23 100 PERCENT IS OBVIOUSLY BETTER.

11:00AM 24 AND WHAT THIS DOES IS, IF WE JUST LOOK AT THE FIRST ONE,
11:00AM 25 THIS HAPPENS TO BE FOR THYROXINE, AND THERE ARE FIVE SAMPLES,

11:00AM 1 JUST LIKE THE PROTOCOL SAID THERE HAD TO BE, AND THEN THERE'S A
11:01AM 2 TEST ON THE PREDICATE AND THEY COMPARE THAT PREDICATE TEST WITH
11:01AM 3 THE THERANOS TECHNOLOGY TEST, AND THEY COMPARE THE TWO NUMBERS,
11:01AM 4 AND THEN THE TOTAL ALLOWABLE ERROR IS A RANGE IT HAS TO FALL
11:01AM 5 WITHIN, IN THIS CASE FOR THIS PARTICULAR ASSAY, PLUS OR MINUS
11:01AM 6 20 PERCENT.

11:01AM 7 AND THEN THAT'S THE PERCENT DIFFERENCE BETWEEN IF YOU LOOK
11:01AM 8 AT SAMPLE 1 BETWEEN 1.42 AND 1.19, 16 PERCENT, SO JUST USING
11:01AM 9 THAT QUICK EXAMPLE, IT FALLS WITHIN THE TOTAL ALLOWABLE ERROR
11:01AM 10 AND THAT'S A PASS FOR SAMPLE 1.

11:01AM 11 AND THEN YOU CAN GO THROUGH ALL OF THESE AND YOU CAN SEE
11:01AM 12 THE COMPARISON AND THE VALUES ACHIEVED FOR THE PREDICATE VERSUS
11:01AM 13 THERANOS AND THEY ARE WITHIN THE TOTAL ALLOWABLE ERROR.

11:01AM 14 AND THIS GOES ON FOR PAGES AND PAGES.

11:01AM 15 SO THIS HAS TSH.

11:01AM 16 PSA IS THE NEXT ONE, 8/17/2014 ON THAT FIRST PAGE.

11:02AM 17 IF WE ZOOM IN ON PSA, MR. ALLEN.

11:02AM 18 SO YOU CAN SEE THAT SECOND GROUP THERE, PSA, 8/17/2014.

11:02AM 19 THERE WERE FIVE SAMPLES AND ALL OF THEM FELL WITHIN THE TOTAL
11:02AM 20 ALLOWABLE ERROR.

11:02AM 21 AND AGAIN, THERE WERE PAGES AND PAGES ABOUT THIS. LET ME
11:02AM 22 JUST SHOW YOU PAGE 3 OF THE EXHIBIT. AGAIN, IT'S 20619.

11:02AM 23 SO THE THIRD GROUP IS HUMAN CHORIONIC GONADOTROPIN -- I'M
11:02AM 24 PROBABLY SAYING THAT WRONG. BUT THAT'S HCG. THAT'S THAT
11:02AM 25 PREGNANCY TEST THAT YOU HEARD A LOT ABOUT, INCLUDING FROM

11:02AM 1 DR. ZACHMAN AND MS. GOULD, AND YOU CAN SEE THIS IS THE SAME
11:02AM 2 MONTH THAT MS. GOULD GOT HER HCG TESTS AND THE COMPARISON OF
11:03AM 3 THE PREDICATE AND THE THERANOS RESULTS SHOWED THAT IT PASSED
11:03AM 4 100 PERCENT.

11:03AM 5 YOU CAN SEE WITH SAMPLES 2 THROUGH 5, THE PREDICATE GOT
11:03AM 6 LOWER THAN 1, AND THEN THE THERANOS GOT LOWER THAN -- THE LOW
11:03AM 7 RANGE OF QUANTIFICATION BASICALLY, LLOQ.

11:03AM 8 SO THESE WERE PASSED WITH PT TESTING. AND AGAIN, THIS
11:03AM 9 GOES ON FOR PAGES AND PAGES.

11:03AM 10 IF YOU GO TO THE LAST PAGE, DR. ELLSWORTH, WHOSE DOCTOR IS
11:03AM 11 MARK BURNES, GOT HIS PSA TESTS IN MAY AND JUNE OF 2015.

11:03AM 12 AND THEN IN MARCH OF 2015, THIS WAS THE PSA, THE RESULTS
11:03AM 13 OF THE PROFICIENCY TESTING, THE AAP TYPE OF PROFICIENCY TESTING
11:03AM 14 FOR PSA.

11:03AM 15 SO THIS IS THE RESULTS. THERE'S NO EVIDENCE IN THIS CASE
11:03AM 16 THAT THERE IS ANYTHING WRONG WITH THESE RESULTS, THAT THESE
11:04AM 17 WEREN'T DONE. AS I SAID, DR. ROSENDORFF REFERRED TO THESE
11:04AM 18 HIMSELF.

11:04AM 19 AND IT SHOWS THAT THERANOS IS DOING THE AAP'S AND THEY'RE
11:04AM 20 GETTING RESULTS THAT ARE 100 PERCENT ALMOST EVERY TIME.

11:04AM 21 SO THE IDEA THAT MR. BALWANI SOMEHOW THINKS THAT THIS
11:04AM 22 TECHNOLOGY DOESN'T WORK WHEN THESE HEAD-TO-HEAD COMPARISONS
11:04AM 23 SHOW THESE RESULTS, THAT DOESN'T MAKE SENSE.

11:04AM 24 SO LET'S GO TO THE NEXT EXHIBIT, WHICH IS MORE OF THIS.

11:04AM 25 SO THOSE WERE THE EDISON TESTS.

11:04AM 1 THERE IS ALSO A WHOLE GROUP OF MODIFIED PREDICATE TESTS.

11:04AM 2 THIS IS EXHIBIT 20620.

11:04AM 3 AND THIS WAS INFORMATION THAT CMS WAS NOTIFIED ABOUT, SO
11:04AM 4 THEY HAD THIS INFORMATION FROM THERANOS. SO THEY WERE GIVEN
11:04AM 5 THIS NOTICE.

11:04AM 6 AND YOU CAN SEE ALL OF THESE ARE MOSTLY 100 PERCENT. I
11:05AM 7 WANT TO HIGHLIGHT JUST A FEW.

11:05AM 8 IF YOU GO TO PAGE 2, MR. ALLEN.

11:05AM 9 AND THERE'S -- IN THE MIDDLE THERE'S A, IT'S SORT OF
11:05AM 10 FOURTH FROM THE BOTTOM, THERE'S A POTASSIUM TEST. YOU CAN SEE
11:05AM 11 THAT THOSE POTASSIUM TESTS IN A HEAD-TO-HEAD COMPARISON CAME UP
11:05AM 12 WITHIN THE TOTAL ALLOWABLE ERROR EVERY TIME WITH THE FIVE
11:05AM 13 SAMPLES.

11:05AM 14 SAME WITH SODIUM. SAME WITH ALL OF THE OTHER ASSAYS ON
11:05AM 15 THE PAGE.

11:05AM 16 AND THEN IF WE GO TO PAGE 4 OF THE DOCUMENT AND YOU LOOK
11:05AM 17 AT THE SECOND TO THE LAST ENTRY, YOU SEE THERE'S ONE THAT IS
11:05AM 18 80 PERCENT; RIGHT?

11:05AM 19 SO THAT WAS STILL A PASS, BUT IT WAS ONE SAMPLE THAT WAS
11:05AM 20 NOT. AND YOU CAN SEE WHAT IT IS. IT'S SAMPLE 4, THE TOTAL
11:06AM 21 ALLOWABLE ERROR, TAE, IS PLUS OR MINUS 1, AND IT WAS 1.1. SO
11:06AM 22 THAT WAS ONE THAT DIDN'T PASS.

11:06AM 23 BUT OVERALL THERE WERE FOUR OUT OF FIVE, SO THAT'S
11:06AM 24 80 PERCENT.

11:06AM 25 AND THEN THE SAME ON THE NEXT PAGE, PAGE 5 WITH AN ASSAY

11:06AM 1 CALLED FERRITIN.

11:06AM 2 SO THESE RESULTS ARE ALMOST PERFECT, BUT, YOU KNOW, NOT
11:06AM 3 QUITE PERFECT. THERE WERE A FEW THAT WERE STILL PASSING, BUT
11:06AM 4 THAT WERE 80 PERCENT RATHER THAN 100 PERCENT.

11:06AM 5 OKAY. SO JUST TO WRAP THAT TOPIC UP.

11:06AM 6 WHATEVER REGULATORY VIOLATIONS MS. BENNETT FOUND, AND SHE
11:06AM 7 DID FIND THOSE, THESE WERE THE ACTUAL HEAD-TO-HEAD COMPARISONS
11:06AM 8 THAT WERE DONE.

11:06AM 9 SO THE GOVERNMENT DIDN'T SHOW THIS TO YOU. WE SHOWED THEM
11:06AM 10 TO YOU. THEY DIDN'T TALK ABOUT IT IN CLOSING. I'M TALKING
11:06AM 11 ABOUT IT. AND I'M TALKING ABOUT IT BECAUSE IT'S WHERE THERANOS
11:07AM 12 IS ACTUALLY DOING THE WORK TO SHOW THAT THEIR ASSAYS ARE
11:07AM 13 WORKING AS FAR AS THE LABORATORY STAFF AND AS FAR AS
11:07AM 14 MR. BALWANI KNOW.

11:07AM 15 YOUR HONOR, I'M GOING TO MOVE TO A DIFFERENT TOPIC. WOULD
11:07AM 16 THIS BE A GOOD TIME FOR A BREAK?

11:07AM 17 THE COURT: IT COULD BE.

11:07AM 18 LADIES AND GENTLEMEN, SHOULD WE TAKE A BREAK NOW? I'M
11:07AM 19 GETTING HEADS NODDING.

11:07AM 20 SHOULD WE TAKE 40 MINUTES THEN, LADIES AND GENTLEMEN,
11:07AM 21 40 MINUTES.

11:07AM 22 THANK YOU, MR. COOPERSMITH. WE'LL BE IN RECESS.

11:07AM 23 (RECESS FROM 11:07 A.M. UNTIL 12:00 P.M.)

12:00PM 24 THE COURT: PLEASE BE SEATED. THANK YOU.

12:00PM 25 WE'RE BACK ON THE RECORD. ALL PARTIES PREVIOUSLY PRESENT

12:00PM 1 ARE PRESENT ONCE AGAIN.

12:00PM 2 MR. COOPERSMITH, WOULD YOU LIKE TO CONTINUE?

12:00PM 3 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

12:00PM 4 ALL RIGHT. WELCOME BACK EVERYONE.

12:00PM 5 I'M GOING TO SWITCH TOPICS NOW AND TALK ABOUT

12:00PM 6 ELIZABETH HOLMES. THIS SHOWS YOU WHERE WE ARE ON THE ROAD MAP.

12:00PM 7 AND LET'S TALK ABOUT HER. THIS IS A PICTURE OF HER.

12:00PM 8 THIS IS FROM THE COVER OF "FORTUNE" MAGAZINE, WHICH YOU SAW

12:00PM 9 DURING THE TRIAL.

12:00PM 10 MS. HOLMES CERTAINLY ASSEMBLED QUITE THE GROUP OF PEOPLE

12:00PM 11 TO OVERSEE THERANOS. SO AS I SAID IN MY REMARKS YESTERDAY, IN

12:01PM 12 THE BEGINNING THERE WAS LARRY ELLISON FROM ORACLE; DON LUCAS,

12:01PM 13 AS I SAID A LEGENDARY INVESTOR HERE IN SILICON VALLEY; AND

12:01PM 14 PROFESSOR ROBERTSON ON THE BOARD.

12:01PM 15 AND THEN THERANOS HAD ACCOMPLISHED A LOT BY THE TIME

12:01PM 16 MR. BALWANI JOINED THE COMPANY WITH ITS CONTRACTS WITH

12:01PM 17 PHARMACEUTICAL COMPANIES THAT WE TALKED ABOUT YESTERDAY.

12:01PM 18 AND SHE CERTAINLY HAS TO BE AS CHARISMATIC AS PEOPLE COULD

12:01PM 19 POSSIBLY BE TO ATTRACT THIS GROUP AS A YOUNG AGE, A RELATIVELY

12:01PM 20 YOUNG AGE.

12:01PM 21 IN FACT, INVESTORS WERE INFORMED THROUGH ROGER PARLOFF 'S

12:01PM 22 PIECE IN "FORTUNE" MAGAZINE, THAT'S THE COVER, THAT

12:01PM 23 PROFESSOR ROBERTSON THOUGHT THAT LOOKING AT HER WAS LIKE

12:01PM 24 LOOKING AT -- STARING INTO THE EYES OF BILL GATES OR

12:01PM 25 STEVE JOBS. THAT'S WHAT PEOPLE THOUGHT OF HER AT THE TIME.

12:01PM 1 LATER SHE ATTRACTED OTHER EXTREMELY NOTABLE PEOPLE FROM
12:02PM 2 BUSINESS INDUSTRY, GOVERNMENT.

12:02PM 3 BILL FRIST, THE FORMER SENATE MAJORITY LEADER AND A HEART
12:02PM 4 SURGEON, SO NOTABLY HE WAS A PHYSICIAN.

12:02PM 5 WILLIAM FOEGE, WHO AT WAS AT ONE TIME THE HEAD OF THE
12:02PM 6 CENTERS OF DISEASE CONTROL, AND THAT WAS SOMEONE THAT SHE PUT
12:02PM 7 ON THE BOARD.

12:02PM 8 AND YOU HAVE TO WONDER IF YOU'RE TRYING TO RUN A
12:02PM 9 FRAUDULENT OPERATION, WHY WOULD YOU PUT THE FORMER HEAD OF THE
12:02PM 10 CENTERS FOR DISEASE CONTROL ON YOUR BOARD. THIS PERSON MIGHT
12:02PM 11 KNOW SOMETHING ABOUT INFECTIOUS DISEASE AND TESTING FOR THAT.

12:02PM 12 SO OTHER PEOPLE. FORMER SENATOR NUNN, FORMER MARINE
12:02PM 13 GENERAL JAMES MATTIS; HENRY KISSINGER. THE LIST GOES ON.

12:02PM 14 RICHARD KOVACEVICH, WHO IS THE FORMER CEO OF WELLS FARGO.
12:02PM 15 AND THESE ARE THE PEOPLE ON THE BOARD. AND WE'LL TALK MORE
12:02PM 16 ABOUT THEIR ROLE IN JUST BIT, BUT THIS IS WHAT ELIZABETH WAS
12:03PM 17 ABLE TO DO.

12:03PM 18 AND SUNNY BALWANI FROM HIS STANDPOINT, THERE'S NO REASON
12:03PM 19 WHY HE WOULDN'T HAVE SEEN THE EXACT SAME THING, THE CHARISMA,
12:03PM 20 THE DRIVE, THE VISION, THE GOAL TO CHANGE DIAGNOSTIC TESTING,
12:03PM 21 AND HE BOUGHT INTO THAT VISION. AND WE SAW YESTERDAY HE BOUGHT
12:03PM 22 INTO THAT VISION NOT WITH HIS TIME BUT ALSO WITH HIS OWN MONEY.

12:03PM 23 SO WHAT WAS, WHAT WAS IT ABOUT HER THAT ATTRACTED THESE
12:03PM 24 LEADING LIKES OF GOVERNMENT, BUSINESS, AND HIGH PROFILE WEALTHY
12:03PM 25 INVESTORS?

12:03PM 1 AND IT WAS, AS I THINK WE'LL SEE FROM THE TESTIMONY I AM
12:03PM 2 GOING TO GO OVER IN A MINUTE, HER CHARISMA, HER ABILITY TO HOLD
12:03PM 3 THE ROOM, HER VISION, HER ABILITY TO SPEAK ON THE TOPICS THAT
12:03PM 4 SHE WAS DEALING WITH AT THERANOS.

12:03PM 5 I THINK IT'S IMPORTANT TO THINK ABOUT THAT WHEN YOU THINK
12:03PM 6 ABOUT SOMETHING LIKE THOSE PHARMACEUTICAL REPORTS THAT THE
12:03PM 7 GOVERNMENT SAYS WERE SOMEHOW FRAUDULENT.

12:04PM 8 I SHOWED THE YESTERDAY THE PHARMACEUTICAL REPORT WHERE
12:04PM 9 ELIZABETH SENT THE REPORT TO GLAXOSMITHKLINE, AND IT HAD THE
12:04PM 10 CONFIDENTIAL VALIDATION INFORMATION IN IT. SO THAT WAS
12:04PM 11 ELIZABETH SENDING IT TO GLAXOSMITHKLINE. IT HAD THE RESULTS OF
12:04PM 12 GLAXOSMITHKLINE'S OWN TESTING, AND SUNNY SAW THAT. WHY WOULD
12:04PM 13 MR. BALWANI DOUBT SOMETHING LIKE GIVEN WHAT HAPPENED AND WHO
12:04PM 14 ELIZABETH HOLMES WAS?

12:04PM 15 AND I WANT TO JUST HAVE YOU KEEP IN MIND THAT, YOU KNOW,
12:04PM 16 SHE'S NOT HERE, RIGHT? SHE'S NOT HERE. AND YOU DON'T EVEN
12:04PM 17 HEAR FROM HER. AND SHE KIND OF LOOMS LARGE IN THE TRIAL. AND
12:04PM 18 THERE'S BEEN A LOT OF DISCUSSION ABOUT HER.

12:04PM 19 AND I'M GOING TO SHOW YOU IN A MINUTE THE JURY
12:04PM 20 INSTRUCTIONS THAT WHAT HER STORY IS AND PREVIOUS PROCEEDINGS
12:04PM 21 INVOLVING HER HAVE NO PART IN THIS TRIAL. THIS IS NOT
12:04PM 22 SOMETHING THAT YOU CAN CONSIDER, AND THAT'S WHAT JUDGE DAVILA
12:04PM 23 WILL TELL YOU. I'LL SHOW YOU THE INSTRUCTION IN A MINUTE.

12:04PM 24 BUT LET'S STICK WITH ELIZABETH HOLMES FOR THE MOMENT.

12:04PM 25 AND, FIRST OF ALL, CHRIS LUCAS ON CROSS TALKED ABOUT HER.

12:05PM 1 AND HE TESTIFIED -- THE QUESTION WAS, AND THAT YOU BELIEVED
12:05PM 2 THAT SHE HAD A WONDERFUL VISION FOR THE COMPANY THAT ULTIMATELY
12:05PM 3 BECAME THERANOS?

12:05PM 4 HE SAID YES.

12:05PM 5 YOU WERE AWARE THAT HIS UNCLE, DON LUCAS, HAD A SIMILAR
12:05PM 6 OPINION OF HER?

12:05PM 7 AND HE SAID YES.

12:05PM 8 AND THIS WAS A REASON WHY HE WAS COMFORTABLE WITH THE
12:05PM 9 INVESTMENT?

12:05PM 10 PEOPLE TRUSTED HER.

12:05PM 11 IF YOU GO TO THE NEXT SLIDE.

12:05PM 12 ALAN EISENMAN WAS TOLD BY HIS COLLEAGUE, DAVID HARRIS,
12:05PM 13 THAT SHE WAS A GENIUS. THAT IS WHAT MR. HARRIS THOUGHT
12:05PM 14 APPARENTLY AND TOLD TO MR. EISENMAN.

12:05PM 15 GO ON.

12:05PM 16 AND THIS IS DAN EDLIN WHO YOU HEARD SPENT A LOT OF TIME
12:05PM 17 WITH HER BOTH AT THERANOS, AND HE EVEN KNEW HER BEFORE THERANOS
12:05PM 18 BECAUSE ELIZABETH'S BROTHER, CHRISTIAN HOLMES, HAD BEEN A
12:06PM 19 CLASSMATE OF MR. EDLIN'S AT DUKE UNIVERSITY. AND HE KNEW
12:06PM 20 ELIZABETH EVEN BEFORE. AND HE WAS IN A GOOD POSITION TO KNOW.
12:06PM 21 SHE COULD REALLY HOLD THE ROOM. SHE WAS AN EXTREMELY ENGAGING
12:06PM 22 SPEAKER. EVERYONE WAS LISTENING TO ELIZABETH HOLMES. SHE HAD
12:06PM 23 A COMMANDING VOICE.

12:06PM 24 SO, YOU KNOW, MR. EDLIN, AGAIN, HE KNEW HER VERY WELL, AND
12:06PM 25 HE WAS IN A GOOD POSITION TO TALK ABOUT THAT.

12:06PM 1 SO THIS IS WHAT ATTRACTED ALL OF THESE PEOPLE, INCLUDING
12:06PM 2 MR. BALWANI, TO THERANOS AND TO THE VISION THAT SHE HAD.

12:06PM 3 YOU KNOW, WE HAD A CHANCE -- I'M GOING TO MENTION THIS
12:06PM 4 NOW, BUT I'LL TALK ABOUT IT MORE LATER. WE HAD A CHANCE TO
12:06PM 5 HEAR WHAT SHE REALLY SOUNDED LIKE WHEN SHE TALKED TO INVESTORS,
12:06PM 6 AND THAT WAS WHEN BRYAN TOLBERT WAS ON THE STAND, AND HE
12:06PM 7 EXPLAINED THERE WAS A TAPE RECORDING OF HER TALKING TO
12:06PM 8 INVESTORS, AND THAT SHE WAS TALKING ABOUT THINGS RELATED TO
12:06PM 9 THERANOS, INCLUDING THE MILITARY RELATIONSHIPS AND THE BLOOD
12:06PM 10 TESTING.

12:06PM 11 AND THE GOVERNMENT HAD IT, BUT THEY DECIDED NOT TO PLAY IT
12:06PM 12 FOR YOU. SO WE LOST THAT CHANCE FOR YOU TO HEAR DIRECTLY WHAT
12:07PM 13 SHE WAS LIKE. SO WE CAN SEE WHAT MR. EDLIN SAID, BUT WE DON'T
12:07PM 14 HAVE THAT. AND, YOU KNOW, THE GOVERNMENT DIDN'T WANT YOU TO
12:07PM 15 HEAR THAT, WHAT SHE ACTUALLY SAID.

12:07PM 16 SO THIS IS THE INSTRUCTION I WAS TALKING ABOUT A MINUTE
12:07PM 17 AGO.

12:07PM 18 SO JUDGE DAVILA WILL TELL YOU WHEN HE INSTRUCTS YOU AS A
12:07PM 19 JURY THAT THE CASE AGAINST MS. HOLMES IS NOT BEFORE YOU. YOU
12:07PM 20 SHOULD NOT SPECULATE WHY. IT SHOULDN'T INFLUENCE YOUR DECISION
12:07PM 21 AS TO MR. BALWANI.

12:07PM 22 AND YOU HAVE ALSO HEARD EVIDENCE, BECAUSE SOME WITNESSES
12:07PM 23 HAVE SAID THIS, THAT THERE WAS A PREVIOUS TRIAL. YOU HAVE TO
12:07PM 24 DECIDE THIS CASE BASED ONLY ON THE EVIDENCE THAT IS BEFORE YOU
12:07PM 25 IN THIS TRIAL, WHICH YOU HAVE SEEN AND HEARD WITH YOUR EYES AND

12:07PM 1 EARS OF THIS TRIAL, AND WHAT THE LAWYERS ARE TELLING YOU ABOUT
12:07PM 2 THE EVIDENCE. THAT'S THE EVIDENCE THAT YOU HAVE TO CONSIDER.
12:07PM 3 IT'S NOT ANYTHING THAT HAPPENED IN MS. HOLMES'S TRIAL.
12:07PM 4 AND WHATEVER HAPPENED TO MS. HOLMES IS NOT SOMETHING THAT YOU
12:07PM 5 NEED TO OR SHOULD OR CAN CONSIDER. SO I JUST WANTED TO MENTION
12:08PM 6 THAT. IT'S IMPORTANT. AND THIS TRIAL IS ABOUT MR. BALWANI AND
12:08PM 7 THE EVIDENCE THAT HAS COME IN DURING THIS TRIAL ABOUT HIM.
12:08PM 8 OKAY. WHICH LEADS ME TO A SUBJECT THAT IS IMPORTANT HERE,
12:08PM 9 AND, THAT IS, SOME OF THE OTHER LAW THAT IS GOING TO BE
12:08PM 10 APPLICABLE, AND I WANT TO JUST GO THROUGH SOME OF THE IMPORTANT
12:08PM 11 THINGS THAT YOU SHOULD KEEP IN MIND.
12:08PM 12 AS A JURY WHEN YOU DELIBERATE -- AND THIS IS GOING TO BE
12:08PM 13 PART OF THE INSTRUCTIONS. SO LET'S TALK ABOUT WIRE FRAUD.
12:08PM 14 SO IN ORDER TO FIND MR. BALWANI GUILTY OF WIRE FRAUD
12:08PM 15 BEYOND A REASONABLE DOUBT, YOU'D HAVE IT FIND THAT HE KNOWINGLY
12:08PM 16 PARTICIPATED IN DEVISE OR INTENDED TO DEVISE A SCHEME OR PLAN
12:08PM 17 TO DEFRAUD, OR SCHEME OR PLAN TO OBTAIN MONEY OR PROPERTY BY
12:08PM 18 MEANS OF FALSE OR FRAUDULENT PRETENSES, REPRESENTATIONS, OR
12:09PM 19 PROMISES.
12:09PM 20 SO THERE ARE SEVERAL PARTS TO THAT.
12:09PM 21 FIRST, YOU HAVE TO FIND THAT HE DID THIS KNOWINGLY. IN
12:09PM 22 OTHER WORDS, HE KNEW, FOR EXAMPLE, THAT A LAB TEST WAS, OR NOT
12:09PM 23 EVEN JUST ONE LAB TEST, BUT, YOU KNOW, ON A WHOLESALE BASIS, A
12:09PM 24 SYSTEMIC BASIS, LAB TESTING WAS INACCURATE, AND HE ALLOWED THEM
12:09PM 25 TO GO FORWARD AND HAVE PATIENT RESULTS RELEASED ANYWAY. NOT

12:09PM 1 THAT HE WAS TRYING TO FIX THE PROBLEM OR HE WAS RELYING ON A
12:09PM 2 SCIENTIFIC TEAM OR ANYTHING LIKE THAT. YOU HAVE TO FIND THAT
12:09PM 3 HE KNOWINGLY DID THAT. I KNOW THE LAB'S SYSTEMICALLY BAD, AND
12:09PM 4 I DON'T CARE, I'M GOING TO RELEASE THOSE RESULTS ANYWAY. YOU
12:09PM 5 HAVE GOT TO FIND THAT.

12:09PM 6 IT'S ALSO, YOU'VE GOT TO --

12:09PM 7 MR. SCHENK: YOUR HONOR, I'M GOING TO OBJECT. THAT
12:09PM 8 IS A MISSTATEMENT OF THE APPLICABLE LAW.

12:09PM 9 THE COURT: WELL, WHAT COUNSEL SAY, LADIES AND
12:09PM 10 GENTLEMEN, AGAIN, IS JUST ARGUMENT. YOU WILL HAVE THE
12:09PM 11 INSTRUCTIONS. THE INSTRUCTION IS IN FRONT OF YOU HERE, AND
12:09PM 12 COUNSEL CAN COMMENT ON THE INSTRUCTION, BUT THE LAW WILL BE
12:09PM 13 GIVEN TO YOU BY ME.

12:09PM 14 SO, MR. COOPERSMITH, IF YOU COULD.

12:09PM 15 MR. COOPERSMITH: YES, YOUR HONOR.

12:10PM 16 AND I THINK THAT'S EXACTLY RIGHT, WHAT JUDGE DAVILA TELLS
12:10PM 17 YOU ABOUT THE LAW IS WHAT SHOULD GOVERN YOUR PROCEEDINGS. AND
12:10PM 18 IT'S GOING TO BE IN YOUR INSTRUCTIONS. AND SO IT'S RIGHT ON
12:10PM 19 THE SCREEN IN FRONT IT OF YOU.

12:10PM 20 AND THEN YOU WOULD HAVE TO FIND IN THAT HIGHLIGHTED
12:10PM 21 SECTION BELOW THAT THE INTENT TO DEFRAUD, THAT MR. BALWANI HAD
12:10PM 22 THE INTENT TO DECEIVE OR CHEAT.

12:10PM 23 SO, IN OTHER WORDS, ON THE PATIENT SIDE OF THIS CASE, HE
12:10PM 24 ACTUALLY INTENDED TO CHEAT THE PATIENTS OUT OF THEIR MONEY THAT
12:10PM 25 THEY WERE PAYING FOR A LAB TEST. THE PEOPLE WHO ACTUALLY PAID

12:10PM 1 FOR THEIR OWN LAB TEST.

12:10PM 2 SO THAT WOULD BE IF THEY PAID \$35, MR. BALWANI, ACCORDING
12:10PM 3 TO THE GOVERNMENT, INTENDED TO DECEIVE OR CHEAT THOSE PEOPLE
12:10PM 4 OUT OF THEIR \$35, EVEN THOUGH, AS WE SAW FROM OR HEARD FROM
12:10PM 5 MS. SPIVEY, THERANOS NEVER ASKED FOR ANY OF THAT MONEY FROM
12:10PM 6 WALGREENS. SO YOU KIND OF WONDER HOW COULD THAT BE THE INTENT?

12:10PM 7 BUT IN ANY EVENT, THOSE ARE THE ELEMENTS OF WIRE FRAUD.

12:10PM 8 THERE ALSO HAS TO BE AN INTERSTATE WIRE COMMUNICATION. AS
12:11PM 9 MR. SCHENK TOLD YOU, SOME OF THAT IS STIPULATED TO WITH THE
12:11PM 10 INVESTMENT WIRES. WE'RE NOT GOING TO ARGUE ABOUT THINGS THAT
12:11PM 11 DON'T MAKE SENSE TO ARGUE.

12:11PM 12 IT IS TRUE THAT INVESTORS TRANSFERRED MONEY TO THERANOS,
12:11PM 13 BECAUSE THEY WERE INVESTORS, BY WIRE TRANSFER. SO THAT ELEMENT
12:11PM 14 WOULD BE MET FOR THE INVESTOR WIRE TRANSFERS.

12:11PM 15 THERE WERE SOME OTHER COUNTS HERE INVOLVING PATIENTS WHERE
12:11PM 16 THAT IS IN DISPUTE, AND I'LL TALK ABOUT THAT A LITTLE BIT
12:11PM 17 LATER.

12:11PM 18 IF WE GO TO THE NEXT SLIDE.

12:11PM 19 THIS IS CONSPIRACY. THERE HAS TO BE AN AGREEMENT BETWEEN
12:11PM 20 TWO OR MORE PEOPLE, SUCH AS MR. BALWANI AND MS. HOLMES, TO
12:11PM 21 COMMIT WIRE FRAUD.

12:11PM 22 AND THEY HAVE TO ENTER INTO THE AGREEMENT KNOWING THAT THE
12:11PM 23 OBJECT IS TO COMMIT WIRE FRAUD. THAT'S THE PURPOSE OF THIS
12:11PM 24 AGREEMENT. THAT'S WHAT THE GOVERNMENT HAS TO PROVE BEYOND A
12:11PM 25 REASONABLE DOUBT.

12:11PM 1 AND I JUST WANT TO HIGHLIGHT A FEW OTHER THINGS HERE. AS
12:11PM 2 YOU CAN SEE SORT OF TOWARDS THE BOTTOM OF THE PAGE IN THE
12:11PM 3 SECOND TO THE LAST PARAGRAPH, NOR IS IT ENOUGH, STANDING ALONE,
12:11PM 4 THAT THEY HAD A BUSINESS OR ROMANTIC RELATIONSHIP. YOU MUST
12:12PM 5 FIND THAT THERE WAS A PLAN TO COMMIT WIRE FRAUD.

12:12PM 6 SO WE'VE HEARD, AND IT'S TRUE, MR. BALWANI AND MS. HOLMES
12:12PM 7 WERE IN A ROMANTIC RELATIONSHIP. YOU HAVE SEEN TEXT MESSAGES
12:12PM 8 BETWEEN THEM. BUT THE FACT THAT THEY ARE IN A RELATIONSHIP,
12:12PM 9 EVEN A VERY CLOSE RELATIONSHIP, IS NOT ENOUGH TO FIND THAT
12:12PM 10 THEY'RE IN A CONSPIRACY. YOU HAVE TO FIND THAT THEY AGREED TO
12:12PM 11 COMMIT A CRIME, IN THIS CASE WIRE FRAUD.

12:12PM 12 AS I'VE SAID YESTERDAY, WHEN YOU LOOK AT ALL OF THE TEXT
12:12PM 13 MESSAGES AND THE EMAILS, THERE'S NOT A SINGLE TIME WHEN
12:12PM 14 MR. BALWANI OR MS. HOLMES SAYS LET'S DO CRIME, LET'S CHEAT
12:12PM 15 PEOPLE, LET'S DECEIVE PEOPLE.

12:12PM 16 WE SAW JUST A LITTLE BIT BEFORE THE BREAK. THEY SAID,
12:12PM 17 WELL, OUR DATA IS GOOD. I MEAN, THAT'S THE OPPOSITE OF A
12:12PM 18 CONSPIRACY TO CHEAT AND DECEIVE PEOPLE.

12:12PM 19 AND THEN YOU HAVE TO FIND BEYOND A REASONABLE DOUBT, TO
12:12PM 20 FIND MR. BALWANI GUILTY OF CONSPIRACY, THAT HE BECAME A MEMBER
12:12PM 21 OF THE CONSPIRACY BY WILLFULLY PARTICIPATING IN THE UNLAWFUL
12:12PM 22 PLAN WITH THE INTENT TO ADVANCE SOME CRIMINAL OBJECT BASICALLY.

12:13PM 23 SO WHAT DOES WILLFULLY MEAN?

12:13PM 24 WILLFULLY MEANS THAT MR. BALWANI WOULD HAVE TO HAVE ACTED
12:13PM 25 WITH THE KNOWLEDGE THAT HIS CONDUCT WAS UNLAWFUL AND WITH THE

12:13PM 1 INTENT TO DO SOMETHING THAT THE LAW FORBIDS. SO HE WOULD HAVE
12:13PM 2 TO ENTER INTO THE CONSPIRATORIAL, ALLEGED CONSPIRATORIAL
12:13PM 3 RELATIONSHIP KNOWING THAT I'M HERE DOING SOMETHING UNLAWFUL,
12:13PM 4 HE'D HAVE TO BE THINKING, AND I HAVE THE INTENT TO DO SOMETHING
12:13PM 5 THAT THE LAW FORBIDS. THAT WOULD HAVE TO BE --IT'S NOT THAT
12:13PM 6 MR. BALWANI WAS IN GOOD FAITH TRYING TO FIX THE PROBLEMS AS
12:13PM 7 THEY AROSE AND SO FORTH.

12:13PM 8 IT WOULD BE, I KNOW I'M DOING WRONG, AND I'M GOING TO DO
12:13PM 9 IT ANYWAY. THAT'S WHAT THE GOVERNMENT WOULD HAVE TO PROVE
12:13PM 10 UNDER THE WILLFULLY STANDARD OF CONSPIRACY.

12:13PM 11 OKAY. SO I WANT TO SHOW YOU SOME OF THE TEXT MESSAGES
12:14PM 12 THAT GO TO THIS POINT. SO THERE'S A MAY 9TH TEXT MESSAGE, AND
12:14PM 13 I'M NOT SHOWING YOU THAT ONE YET, BUT LET ME JUST TALK ABOUT
12:14PM 14 IT.

12:14PM 15 SO THERE'S A MAY 9TH, 2012 TEXT MESSAGE THAT THE
12:14PM 16 GOVERNMENT SHOWED YOU. AND THIS IS WHERE ELIZABETH HOLMES
12:14PM 17 WROTE TO MR. BALWANI, "WE HAVE TO WORK TOGETHER ON THE REVENUE
12:14PM 18 PIECE."

12:14PM 19 AND THEN IT GOES ON, ON MAY 9TH, 2012 TO SAY, "WE NEED
12:14PM 20 REVENUE."

12:14PM 21 AND THE GOVERNMENT USED THAT IN ITS REMARKS YESTERDAY,
12:14PM 22 POINTING TO THIS AS SOME KIND OF EVIDENCE OF CONSPIRACY.

12:14PM 23 WELL, EVERY COMPANY NEEDS REVENUE. THE FACT THAT THE COO
12:14PM 24 AND THE CEO ARE SAYING "WE NEED REVENUE," I THINK THAT
12:14PM 25 DISCUSSION WILL GO ON IN THE OFFICES OF EXECUTIVES ALL OVER THE

12:14PM 1 COUNTRY, ALL OVER THE WORLD EVERY SINGLE DAY. REVENUE IS
12:14PM 2 IMPORTANT. NO QUESTION IN COMMERCE AND IN BUSINESS.

12:14PM 3 BUT THE GOVERNMENT MENTIONED THAT 2012 TEXT THAT I JUST
12:14PM 4 MENTIONED FROM 2012 IN THE SAME BREADTH AS THE ONE I'M SHOWING
12:14PM 5 YOU ON THE SCREEN NOW WHERE MR. BALWANI SAYS --

12:15PM 6 I'M SORRY. IF YOU COULD TAKE THAT DOWN, MR. ALLEN. I
12:15PM 7 JUST WANT TO MAKE SURE I'M ON THE RIGHT TRACK.

12:15PM 8 I'M TALKING ABOUT A JULY 2015 TEXT WHERE YOU PROBABLY
12:15PM 9 REMEMBER WHERE MR. BALWANI SAID HE'S RESPONSIBLE FOR EVERYTHING
12:15PM 10 AT THERANOS, "ALL HAVE BEEN MY DECISIONS TOO."

12:15PM 11 AND THE GOVERNMENT MENTIONED THAT IN THE SAME BREADTH AS
12:15PM 12 THIS TEXT MESSAGE FROM THREE YEARS BEFORE WHERE THEY TALKED
12:15PM 13 ABOUT NEEDING REVENUE.

12:15PM 14 AND THEN MR. SCHENK SAID -- AND THEN MR. BALWANI SAID ALL
12:15PM 15 HAVE BEEN HIS DECISIONS TOO.

12:15PM 16 AND THE GOVERNMENT POINTS TO "ALL HAVE BEEN MY DECISIONS
12:15PM 17 TOO" AS SOME KIND OF INCRIMINATING EVIDENCE AGAINST
12:15PM 18 MR. BALWANI. WELL, HE WAS THE CHIEF OPERATING OFFICER AND
12:15PM 19 PRESIDENT OF THERANOS. OF COURSE, HE HAD A HAND IN MAKING THE
12:15PM 20 DECISIONS AT THERANOS. THE DEFENSE HAS NEVER CLAIMED
12:15PM 21 OTHERWISE.

12:15PM 22 MR. BALWANI MADE THE JUDGMENTS HE MADE.

12:15PM 23 AND AS I SAID YESTERDAY, IN HINDSIGHT MAYBE WE COULD FIND
12:16PM 24 SOME INSTANCE WHERE HE SHOULD HAVE MADE A DIFFERENT JUDGMENT,
12:16PM 25 BUT THAT'S NOT THE STANDARD. YOU LOOK AT THINGS IN REAL TIME

12:16PM 1 AS THEY ARE HAPPENING.

12:16PM 2 AND FOR THE GOVERNMENT TO SAY A TEXT THAT SAYS "I'M
12:16PM 3 RESPONSIBLE FOR THINGS AT THERANOS" IS SOMEHOW INCRIMINATING,
12:16PM 4 THAT ASSUMES THAT THEY'VE ALREADY PROVEN THEIR CASE. SO, SURE,
12:16PM 5 IF THE GOVERNMENT HAD ALREADY PROVEN THEIR CASE BEYOND A
12:16PM 6 REASONABLE DOUBT, THEN SOMEONE SAYING, "YES, I'M RESPONSIBLE
12:16PM 7 FOR EVERYTHING AT THERANOS," THAT MIGHT BE INCRIMINATING OR A
12:16PM 8 PROBLEM WILL, BUT THAT HAS NOT BEEN DETERMINED. THAT'S FOR
12:16PM 9 YOU, THE JURY, TO DECIDE.

12:16PM 10 AND THERE'S NOTHING INCRIMINATING ABOUT WHAT MR. BALWANI
12:16PM 11 IS SAYING, YEAH, I'M THE COO AND PRESIDENT OF THE COMPANY, I'VE
12:16PM 12 MADE DECISIONS AT THERANOS, IT'S BEEN MY DECISIONS, TOO, I'M
12:16PM 13 RESPONSIBLE.

12:16PM 14 HE WAS A VERY SENIOR OFFICER AT THERANOS, AND WE'RE NOT
12:16PM 15 CLAIMING OTHERWISE, AND HE WAS RESPONSIBLE ALONG WITH
12:16PM 16 MS. HOLMES FOR THE OPERATION OF THERANOS.

12:16PM 17 NOW, I WANT TO SHOW YOU THE TEXT I WAS GOING TO SHOW YOU,
12:16PM 18 AND I GOT A LITTLE CONFUSED THERE FOR A MINUTE. BUT BASICALLY
12:16PM 19 THIS IS THE TEXT MESSAGE THAT MR. BALWANI SENDS TO MS. HOLMES
12:17PM 20 JUST THE DAY AFTER THIS "WALL STREET JOURNAL" -- THE NEGATIVE
12:17PM 21 "WALL STREET JOURNAL" ARTICLE THAT YOU'VE HEARD ABOUT.

12:17PM 22 SO THE NEXT DAY HE SAYS, "I KNOW. I AM STRONG ON FACTS.
12:17PM 23 THEY ALWAYS REACT TO ANYTHING BUT I WILL BE STRONG."

12:17PM 24 SO MR. BALWANI IS NOT SAYING, OH,
12:17PM 25 "THE WALL STREET JOURNAL," THEY FOUND OUT SOME STUFF, AND WE'RE

12:17PM 1 CAUGHT. YOU KNOW, THE JIG IS UP, RIGHT?

12:17PM 2 HE SAYS I'M STRONG OPENING FACTS. HE'S GOING TO CALL AND
12:17PM 3 EXPLAIN THE FACTS.

12:17PM 4 AND THIS IS, AGAIN, A TEXT MESSAGE BETWEEN TWO PEOPLE IN
12:17PM 5 PRIVATE, NO ONE ELSE IS LISTENING, THIS IS THE TWO OF THEM, AND
12:17PM 6 IT'S THE OPPOSITE OF SOME CONSPIRATORIAL AGREEMENT.

12:17PM 7 I WANT TO TALK A LITTLE BIT MORE ABOUT THE LAW.

12:17PM 8 AS YOU'VE SEEN, MR. BALWANI DECIDED NOT TO TESTIFY IN THIS
12:17PM 9 CASE. THAT IS HIS CONSTITUTIONAL RIGHT. AND IN SORT OF NORMAL
12:17PM 10 LIFE, YOU KNOW, YOU MIGHT THINK, WELL, SOMEONE MIGHT HAVE TO
12:17PM 11 EXPLAIN THEMSELVES, LIKE THAT'S IMPORTANT, RIGHT?

12:18PM 12 AND I THINK YOU WERE ASKED THIS QUESTION IN YOUR JURY
12:18PM 13 QUESTIONNAIRES ABOUT HOW YOU THOUGHT OF THIS PRINCIPLE, AND YOU
12:18PM 14 ALL RESPONDED TO THAT.

12:18PM 15 BUT WHAT JUDGE DAVILA WILL TELL YOU IS THAT IT'S
12:18PM 16 ABSOLUTELY PROHIBITED FOR YOU TO TAKE INTO ACCOUNT THAT
12:18PM 17 MR. BALWANI DIDN'T TESTIFY. THAT IS HIS CONSTITUTIONAL RIGHT,
12:18PM 18 AND IT CANNOT BE USED IN ANY WAY AGAINST HIM OR TO DETERMINE
12:18PM 19 THAT HE'S GUILTY OF ANYTHING.

12:18PM 20 AND I SHOULD ALSO NOTE THAT IN THE COURSE OF THIS TRIAL,
12:18PM 21 THE DEFENSE HAS PRESENTED A TON OF EVIDENCE THROUGH THE
12:18PM 22 GOVERNMENT WITNESSES AND THROUGH SOME OF THE WITNESSES THAT WE
12:18PM 23 CALLED, THE TWO WITNESSES THAT WE CALLED.

12:18PM 24 SO THERE IS EVIDENCE FROM THE DEFENSE, BUT IT'S NOT FROM
12:18PM 25 MR. BALWANI, AND YOU DON'T HAVE TO -- YOU CANNOT TAKE THAT INTO

12:18PM 1 ACCOUNT IN DECIDING HOW TO VOTE ON THE VERDICTS IN THIS CASE.

12:18PM 2 SO I JUST THINK THAT'S IMPORTANT TO NOTE.

12:18PM 3 LET'S GO TO THE NEXT SLIDE.

12:19PM 4 OKAY. THIS IS A REALLY IMPORTANT CONCEPT, REASONABLE
12:19PM 5 DOUBT, AND THIS IS THE STANDARD OF PROOF THAT THE GOVERNMENT
12:19PM 6 HAS, THE BURDEN OF PROOF.

12:19PM 7 SO THIS IS NOT A SITUATION WHERE, WELL, IF YOU THINK IT'S
12:19PM 8 MORE LIKELY, A LITTLE MORE LIKELY THAT SOMETHING HAPPENED
12:19PM 9 VERSUS DIDN'T HAPPEN, THAT'S NOT GOOD ENOUGH.

12:19PM 10 THE GOVERNMENT HAS TO PROVE EVERY ELEMENT OF THE OFFENSES
12:19PM 11 THEY'VE CHARGED, WIRE FRAUD AND CONSPIRACY, BEYOND A REASONABLE
12:19PM 12 DOUBT. AND THIS IS THE INSTRUCTION THAT I PUT ON THE SCREEN
12:19PM 13 THAT JUDGE DAVILA WILL GIVE YOU DEFINING THE CONCEPT OF
12:19PM 14 REASONABLE DOUBT.

12:19PM 15 AND AS YOU CAN SEE, REASONABLE DOUBT MAY ARISE FROM A
12:19PM 16 CAREFUL AND IMPARTIAL CONSIDERATION OF ALL OF THE EVIDENCE, OR
12:19PM 17 FROM A LACK OF EVIDENCE.

12:19PM 18 SO IF YOU DON'T THINK THERE'S ENOUGH EVIDENCE, THAT'S
12:19PM 19 ANOTHER REASON THAT YOU COULD FIND REASONABLE DOUBT, AND,
12:19PM 20 THEREFORE, VOTE FOR ACQUITTAL.

12:19PM 21 IT GOES ON. IF AFTER A CAREFUL AND IMPARTIAL
12:19PM 22 CONSIDERATION OF ALL OF THE EVIDENCE, YOU ARE NOT CONVINCED
12:19PM 23 BEYOND A REASONABLE DOUBT THAT MR. BALWANI IS GUILTY, IT IS
12:19PM 24 YOUR DUTY TO FIND MR. BALWANI NOT GUILTY. SO YOU'D HAVE TO BE
12:20PM 25 CONVINCED BEYOND A REASONABLE DOUBT.

12:20PM 1 AND THEN I WANT TO SHOW YOU OUR VIEW OF REASONABLE DOUBT.
12:20PM 2 THIS IS A STAIR STEPS, YOU KNOW, JUST TO USE THAT ANALOGY, OF
12:20PM 3 VARIOUS STANDARDS THAT COULD APPLY.

12:20PM 4 YOU KNOW, THE BOTTOM STEP, AS YOU SEE, IS NO EVIDENCE.
12:20PM 5 SO, OF COURSE, NOTHING HAPPENS.

12:20PM 6 SCINTILLA OF EVIDENCE. A VERY SMALL AMOUNT OF EVIDENCE
12:20PM 7 MIGHT BE APPROPRIATE IN SOME CASES.

12:20PM 8 PROBABLE CAUSE LIKE TO GET A SEARCH WARRANT OR EVEN AN
12:20PM 9 INDICTMENT.

12:20PM 10 PREPONDERANCE OF THE EVIDENCE I BRIEFLY MENTIONED A MINUTE
12:20PM 11 AGO, BUT THAT'S WHERE ONE VERSION OF THE FACTS OR EVENTS IS
12:20PM 12 SLIGHTLY MORE, EVEN JUST OVER 50 PERCENT, MORE LIKELY THAN THE
12:20PM 13 OTHER, THAT WOULD BE PREPONDERANCE OF THE EVIDENCE. THAT'S THE
12:20PM 14 KIND OF STANDARD THAT GOVERNS IN CIVIL TRIALS. THIS IS A
12:20PM 15 CRIMINAL TRIAL. SO THAT'S NOT THE STANDARD THAT YOU HAVE TO
12:21PM 16 USE.

12:21PM 17 CLEAR AND CONVINCING EVIDENCE AS WE UNDERSTAND IS IT IS
12:21PM 18 SOMETIMES USED IN THE LAW.

12:21PM 19 REASONABLE DOUBT. IF YOU GOT TO THAT STEP, YOU WOULD
12:21PM 20 STILL HAVE REASONABLE DOUBT, AND YOU WOULD HAVE TO VOTE FOR
12:21PM 21 ACQUITTAL.

12:21PM 22 AND THEN, OF COURSE, BEYOND A REASONABLE DOUBT. THAT'S
12:21PM 23 THE STANDARD, THE HIGH STEP THAT YOU WOULD NEED TO FIND, TO
12:21PM 24 FIND MR. BALWANI GUILTY OF ANYTHING.

12:21PM 25 AND SOMETIMES IT'S A HARD CONCEPT BECAUSE IT'S NOT

12:21PM 1 NECESSARILY SOMETHING THAT YOU USE IN YOUR EVERY DAY LIFE,
12:21PM 2 EXCEPT IT'S MAYBE WORTH TALKING ABOUT IT IN THIS WAY, THAT
12:21PM 3 THINK ABOUT THE MOST IMPORTANT DECISION THAT YOU'VE EVER HAD TO
12:21PM 4 MAKE IN YOUR LIFE, AND WHAT STANDARD WOULD YOU WANT TO HAVE?
12:21PM 5 WHAT -- HOW MUCH, YOU KNOW, EVIDENCE? WHAT -- THE FACTS THAT
12:21PM 6 YOU HAVE IN FRONT OF YOU IN ORDER TO MAKE THE BEST POSSIBLE
12:21PM 7 DECISION THAT YOU CAN MAKE. NOT ABOUT SOME EVERY DAY THING,
12:21PM 8 WHAT OUTFIT SHOULD I WEAR? THINGS LIKE THAT. BUT THE MOST
12:22PM 9 IMPORTANT DECISION THAT YOU WOULD EVER HAVE TO MAKE AND WHAT
12:22PM 10 STANDARD WOULD YOU WANT.

12:22PM 11 AND THINK ABOUT IF YOU FELT THAT WHEN YOU WERE TRYING TO
12:22PM 12 MAKE THAT DECISION YOU JUST DIDN'T HAVE ENOUGH, YOU DIDN'T HAVE
12:22PM 13 ENOUGH FACTS. YOU NEEDED MORE INFORMATION. YOU WOULD GO OUT
12:22PM 14 AND SEEK THAT INFORMATION, RIGHT?

12:22PM 15 NOW, OF COURSE, YOU CAN'T SEEK IT HERE BECAUSE THE
12:22PM 16 INFORMATION THAT YOU'RE GETTING IS WHAT HAS BEEN SAID AND
12:22PM 17 PRESENTED TO YOU WITHIN THE WALLS OF THIS COURTROOM.

12:22PM 18 BUT IF YOU NEED MORE EVIDENCE, IF YOU FEEL LIKE YOU NEED
12:22PM 19 MORE TO MAKE THAT REALLY IMPORTANT DECISION, AND THIS IS THE
12:22PM 20 MOST IMPORTANT DECISION THAT MR. BALWANI WILL EVER FACE, YOU
12:22PM 21 WOULD NEED TO, IF YOU DON'T THINK YOU HAVE ENOUGH EVIDENCE,
12:22PM 22 THAT'S REASONABLE DOUBT. AND THAT'S WHY JUDGE DAVILA WILL TELL
12:22PM 23 YOU WHEN HE INSTRUCTS YOU THAT A LACK OF EVIDENCE IS ALSO A
12:22PM 24 REASON TO FIND REASONABLE DOUBT.

12:22PM 25 BUT IT'S NOT JUST A LACK OF EVIDENCE. WE HAVE PRESENTED A

12:22PM 1 LOT OF EVIDENCE, AND IT'S ALL OF THE EMAILS AND ALL OF THE
12:22PM 2 THINGS THAT WE HAVE BEEN PRESENTING, MUCH OF WHICH THE
12:22PM 3 GOVERNMENT HAS NOT SHOWN YOU, THAT LEADS TO THAT REASONABLE
12:22PM 4 DOUBT DECISION.

12:22PM 5 AND I WANT TO MAKE SURE THAT THAT CONCEPT WAS AS CLEAR AS
12:22PM 6 I CAN MAKE IT. AGAIN, THE GOVERNMENT HASN'T PROVED MR. BALWANI
12:23PM 7 GUILTY OF ANYTHING, ANY OF THE CHARGES. BUT THEY HAVE TO PROVE
12:23PM 8 EACH AND EVERY ELEMENT OF THOSE CHARGES BEYOND A REASONABLE
12:23PM 9 DOUBT, AND THAT'S WHAT WE'RE DOING HERE.

12:23PM 10 OKAY. LET'S SWITCH GEARS AND TALK ABOUT WHAT MATTERED TO
12:23PM 11 INVESTORS AND IN PARTICULAR THE WALGREENS RELATIONSHIP. OKAY.
12:23PM 12 SO I'VE TALKED SOME ABOUT THE THERANOS BOARD, BUT I'M GOING TO
12:23PM 13 TALK ABOUT IT A LITTLE BIT MORE.

12:23PM 14 SO INVESTORS TESTIFIED THAT THE COMPOSITION OF THE BOARD
12:23PM 15 WAS IMPORTANT TO THEM. AND THAT'S NOT SURPRISING. THAT'S THE
12:23PM 16 ULTIMATE AUTHORITY IN THE COMPANY.

12:23PM 17 WE SAW THE DOCUMENT YESTERDAY WHERE THE BOARD HAS THE
12:23PM 18 ULTIMATE DECISION ON MATTERS FOR THE COMPANY. AND THAT THERE
12:23PM 19 WAS A BOARD OF DIRECTORS, OF COURSE. WE DIDN'T HEAR FROM ANY
12:23PM 20 OF THEM. THE GOVERNMENT DIDN'T CALL THEM. BUT WE HAVE SOME
12:23PM 21 INFORMATION ABOUT THEM.

12:23PM 22 SO LET'S TALK ABOUT WHO THE BOARD WAS. THIS IS THE
12:24PM 23 EARLIER PERIOD, SO 2010. AS OF AUGUST OF 2010, THE BOARD WAS
12:24PM 24 SUNNY BALWANI, ELIZABETH HOLMES, DON LUCAS, ROBERT SHAPIRO,
12:24PM 25 PETER THOMAS, AND CHANNING ROBERTSON.

12:24PM 1 SO THIS IS THE SET OF BOARD MINUTES.

12:24PM 2 AND THEN THIS IS ACTUALLY A DOCUMENT THAT I WAS JUST

12:24PM 3 MENTIONING. I GUESS I'M SHOWING IT TO YOU NOW. THIS IS

12:24PM 4 AUGUST 10TH, 2010, AND IT'S THE AMENDED AND RESTATED BYLAWS OF

12:24PM 5 THERANOS. IT'S WHAT YOU CALL A CORPORATE GOVERNANCE DOCUMENT.

12:24PM 6 IT'S A BASIC DOCUMENT THAT GOVERNS THE OPERATION OF THE

12:24PM 7 COMPANY, AND IT WAS LAST AMENDED AS OF AUGUST 2010.

12:24PM 8 SO IF YOU LOOK AT THIS EXHIBIT, WHICH IS 20512, IT TALKS

12:24PM 9 ABOUT THE POWERS OF THE DIRECTORS, AND THE HIGHLIGHTED PART

12:24PM 10 THERE, "THE BUSINESS AND AFFAIRS OF THE COMPANY SHALL BE

12:24PM 11 MANAGED AND ALL CORPORATE POWERS SHALL BE EXERCISED BY OR UNDER

12:24PM 12 THE DIRECTION OF THE BOARD."

12:24PM 13 SO THAT'S THE BOARD'S ROLE, AND THAT'S WHAT THE CORPORATE

12:25PM 14 DOCUMENTS PROVIDE.

12:25PM 15 OKAY. AND I JUST WANT TO GO INTO A LITTLE MORE DETAIL

12:25PM 16 INTO WHO THE BOARD MEMBERS WERE.

12:25PM 17 AND, MR. ALLEN, IF YOU COULD ZOOM IN ON THESE ONE AT A

12:25PM 18 TIME.

12:25PM 19 SO OBVIOUSLY MS. HOLMES WE KNOW WAS ON THE BOARD.

12:25PM 20 GEORGE SHULTZ WAS ON THE BOARD, AND HE WAS THE SECRETARY

12:25PM 21 OF STATE IN THE REAGAN ADMINISTRATION. HE WAS THE RECIPIENT OF

12:25PM 22 THE MEDAL OF FREEDOM, THE NATION'S HIGHEST CIVILIAN HONOR.

12:25PM 23 SAM NUNN WAS ON THE UNITED STATES SENATOR FROM GEORGIA FOR

12:25PM 24 24 YEARS. HE ALSO SERVED ON THE BOARDS AT VARIOUS TIMES OF

12:25PM 25 CHEVRON CORPORATION, COCA-COLA COMPANY, DELL COMPUTER,

12:25PM 1
12:25PM 2
12:25PM 3
12:25PM 4
12:25PM 5
12:26PM 6
12:26PM 7
12:26PM 8
12:26PM 9
12:26PM 10
12:26PM 11
12:26PM 12
12:26PM 13
12:26PM 14
12:26PM 15
12:26PM 16
12:26PM 17
12:26PM 18
12:26PM 19
12:26PM 20
12:26PM 21
12:26PM 22
12:27PM 23
12:27PM 24
12:27PM 25

GENERAL ELECTRIC.

WILLIAM FRIST, WHO I'VE MENTIONED, NATIONALLY RECOGNIZED
HEART AND LUNG TRANSPLANT SURGEON AND FORMER U.S. SENATE
MAJORITY LEADER.

GARY ROUGHEAD WAS A RETIRED UNITED STATES NAVY ADMIRAL AND
HE SERVED ON THE BOARD OF NORTHRUP GRUMMAN CORPORATION.

JAMES MATTIS. RETIRED UNITED STATES MARINE CORPS GENERAL,
WHO WAS THE COMMANDER OF THE UNITED STATES CENTRAL COMMAND ALSO
KNOWN AS CENTCOM.

WILLIAM FOEGE I MENTIONED BEFORE. HE WAS THE FORMER
DIRECTOR OF THE CENTERS OF DISEASE CONTROL. HE WAS ALSO SENIOR
MEDICAL ADVISOR FOR THE BILL AND MELINDA GATES FOUNDATION FOR A
NUMBER OF YEARS.

WILLIAM PERRY. ENTREPRENEUR, MATHEMATICIAN, AND ENGINEER.
HE SERVED AS SECRETARY OF DEFENSE IN THE CLINTON
ADMINISTRATION.

RICHARD KOVACEVICH WAS THE CEO OF WELLS FARGO. HE SERVED
ON OTHER BOARDS AS WELL INCLUDING CARGILL, CLEARING HOUSE, AND
CISCO.

RILEY BECHTEL. HE WAS CHAIRMAN OF THE BOARD OR WAS
CHAIRMAN OF THE BOARD AND DIRECTOR OF BECHTEL GROUP.

HENRY KISSINGER. A FAMILIAR NAME. HE WAS THE SECRETARY
OF STATE DURING THE NIXON ADMINISTRATION AND THE FORD
ADMINISTRATION, TOO, I BELIEVE.

AND THEN MR. BALWANI, WHO I SHOWED YOU THAT BIO EARLIER,

12:27PM 1 SO I WON'T REPEAT THAT.

12:27PM 2 BUT THAT WAS THE BOARD AT THERANOS THAT THE INVESTORS WERE
12:27PM 3 UNDERSTANDABLY IMPRESSED WITH, AS WAS MR. BALWANI NO DOUBT.

12:27PM 4 IF YOU GO TO THE SET OF EXHIBITS HERE, IF YOU WANT TO
12:27PM 5 WRITE THESE DOWN, THOSE ARE THE BOARD MINUTES THAT ACTUALLY
12:27PM 6 CAME INTO EVIDENCE REFLECTING THE MEETINGS OF THE BOARD. AND
12:27PM 7 THOSE ARE THE EXHIBIT NUMBERS LISTED THERE ON THE LEFT. AND
12:27PM 8 THEY WOULD TELL YOU WHAT THE BOARD WAS DISCUSSING IN THOSE
12:27PM 9 BOARD MINUTES.

12:27PM 10 I WANTED TO SHOW YOU ONE OF THOSE, AND THAT'S FROM
12:27PM 11 JANUARY 20TH, 2015, WHICH IS EXHIBIT 20514.

12:27PM 12 THIS IS JUST SOME OF THE INFORMATION THAT THE BOARD WOULD
12:28PM 13 HAVE DISCUSSED OR DID DISCUSS.

12:28PM 14 SO HERE YOU SEE THE BOARD RESOLVED TO APPROVE AMENDMENTS
12:28PM 15 OF THE COMPANY'S SERIES C-2 STOCK PURCHASE AGREEMENT AND
12:28PM 16 ARTICLES OF INCORPORATION TO ALLOW FOR THE ISSUANCE OF UP TO AN
12:28PM 17 ADDITIONAL \$800 MILLION OF SERIES C-2 SHARES.

12:28PM 18 SO C-2 SHARES, THESE WOULD BE INVESTORS LIKE MR. MOSLEY
12:28PM 19 AND RDV WHO BOUGHT INTO THAT, WHAT THEY CALL THE C-2 ROUND, AND
12:28PM 20 THE BOARD AUTHORIZED THAT.

12:28PM 21 AND THE BOARD ALSO HAD A DISCUSSION ABOUT CONTINUED FOCUS
12:28PM 22 ON PROMOTING FROM WITHIN SCALING THE COMPANY'S OPERATIONS,
12:28PM 23 CONTINUING TO DEVELOP AND IMPLEMENT THE COMPANY'S NEXT
12:28PM 24 GENERATION TECHNOLOGIES, AND THEN THEY WOULD HAVE HAD A FULL
12:28PM 25 DISCUSSION ABOUT THOSE TOPICS.

12:28PM 1 IF YOU GO TO THE NEXT COMMERCIAL AND OPERATIONS UPDATE.

12:28PM 2 MS. HOLMES GAVE THE BOARD AN UPDATE OF THE COMPANY'S

12:28PM 3 COMMERCIAL OPERATIONS, INCLUDING ITS CONTRACTS AND FOCAL AREAS

12:28PM 4 IN RETAIL AND HOSPITAL AND PHYSICIAN GROUPS.

12:29PM 5 MS. HOLMES PROVIDED THE BOARD WITH AN OVERVIEW OF THE

12:29PM 6 COMPANY'S RETAIL PERFORMANCE. THAT WOULD HAVE BEEN THE

12:29PM 7 WALGREENS RELATIONSHIP.

12:29PM 8 MS. HOLMES DISCUSSED WITH THE BOARD THE COMPANY'S

12:29PM 9 STRATEGIC ALLIANCE WITH THE CLEVELAND CLINIC AS WELL AS OTHER

12:29PM 10 CONTRACTS.

12:29PM 11 MS. HOLMES DESCRIBED TO THE BOARD THE COMPANY'S

12:29PM 12 COMMUNICATIONS INITIATIVES AND IN THAT CONTEXT DISCUSSED

12:29PM 13 CERTAIN INFORMATION DISCLOSED TO THE DIRECTORS THE COMPANY

12:29PM 14 NEEDED TO CONTINUE TO KEEP CONFIDENTIAL.

12:29PM 15 SO THE BOARD IS BEING KEPT ABREAST OF THE AFFAIRS AT

12:29PM 16 THERANOS AND THAT IS WHAT THESE MEETING MINUTES REFLECT. I'M

12:29PM 17 JUST PICKING THE ONE FROM JANUARY 15TH.

12:29PM 18 OKAY. YOU CAN SEE MS. HOLMES REVIEWED AT THE BOARD THE

12:29PM 19 COMPANY'S HISTORICAL FINANCIAL STATEMENTS. SO NOT THE

12:29PM 20 PROJECTIONS BUT THE ACTUAL FINANCIAL STATEMENTS, AND THE BOARD

12:29PM 21 WAS AWARE OF THAT. WE'RE GOING TO SEE A LITTLE BIT MORE ABOUT

12:29PM 22 THAT IN JUST A BIT.

12:29PM 23 AND THEN DURING THE EXAMINATION OF MS. SPIVEY, YOU HEARD

12:30PM 24 SOME TALK ABOUT A COMPANY CALLED ARANCA, WHICH WAS AN OUTSIDE

12:30PM 25 COMPANY THAT DID VALUATIONS OF THERANOS FOR THE PURPOSE OF THIS

12:30PM 1 I.R.S. CODE SECTION 409A.

12:30PM 2 AND THE BOARD REVIEWED THAT INDEPENDENT VALUATION REPORT
12:30PM 3 BY ARANCA AS WELL AS THE INFORMATION THAT WE'RE DISCUSSING, AND
12:30PM 4 WE'LL TALK MORE ABOUT THAT IN A MINUTE.

12:30PM 5 MS. HOLMES REVIEWED WITH THE BOARD THE COMPANY'S
12:30PM 6 INTELLECTUAL PROPERTY PORTFOLIO AND THE STRATEGY FOR ITS
12:30PM 7 CONTINUED DEVELOPMENT. THIS IS ALL OF THE PATENTS AND THE
12:30PM 8 TRADEMARKS AND THOSE THINGS THAT PROTECTED THERANOS'S
12:30PM 9 INTELLECTUAL PROPERTY, ITS INVENTIONS.

12:30PM 10 AND YOU CAN GO ON.

12:30PM 11 SO IN TERMS OF INVESTORS, THIS IS BRYAN TOLBERT. HE
12:30PM 12 TESTIFIED THAT HE WAS FROM GEORGIA, AND HE GREW UP IN GEORGIA,
12:30PM 13 AND THAT SAM NUNN WAS HIS SENATOR. SO THAT WAS MEANINGFUL TO
12:31PM 14 HIM THAT SAM NUNN WAS ON THE BOARD OF THERANOS. AND SO THAT IS
12:31PM 15 A FACTOR THAT ATTRACTED MR. TOLBERT.

12:31PM 16 LET'S TALK ABOUT SOME OF THE INFORMATION THAT THE BOARD
12:31PM 17 HAD. SO IN PARTICULAR, SAM NUNN.

12:31PM 18 IF YOU CAN GO TO THE NEXT SLIDE.

12:31PM 19 SO JUDGE DAVILA READ YOU A STIPULATION DURING TRIAL, AND
12:31PM 20 IT'S ABOUT CERTAIN EXHIBITS. AND THE EXHIBIT NUMBERS ARE
12:31PM 21 ACTUALLY 20788 AND 20145, IF ANYONE WANTS TO WRITE THAT DOWN.
12:31PM 22 AND THE STIPULATION, I WON'T READ IT, BUT THE STIPULATION IS
12:31PM 23 THAT SAM NUNN WHO WAS ON THE BOARD, FORMER SENATOR, WAS
12:31PM 24 PROVIDED WITH CERTAIN INFORMATION BY THERANOS, AND HE ACTUALLY
12:31PM 25 PRODUCED IT IN RESPONSE TO A SUBPOENA, SO THAT'S WHY WE HAVE

12:31PM 1 IT.

12:31PM 2 IF YOU CAN GO TO THE NEXT PAGE. SO THIS IS AN EMAIL FROM

12:32PM 3 TEMPE STEPHEN DATED JULY 15TH, 2014.

12:32PM 4 AND THE EMAIL SAYS, "SENATOR -- THE THERANOS FINANCIALS

12:32PM 5 THAT VALERIA SENT YOU IS PASSWORD PROTECTED AND WILL PROBABLY

12:32PM 6 BE CUMBERSOME TO GET INTO FROM YOUR IPAD SO I'M ATTACHING IT

12:32PM 7 HERE FOR EASIER VIEWING. IT'S THREE PAGES LONG."

12:32PM 8 LET'S LOOK AT THE INFORMATION THAT MS. STEPHEN SENT. SO

12:32PM 9 ON THE LEFT IS THE DOCUMENT THAT IS IN EVIDENCE THAT SAM NUNN

12:32PM 10 WAS PROVIDED WITH THERANOS, AND THAT IS EXHIBIT 20788.

12:32PM 11 AND THEN ON THE RIGHT IS THE INFORMATION THAT MR. MOSLEY

12:32PM 12 AND MS. PETERSON AT RDV HAD RECEIVED.

12:32PM 13 SO OTHER THAN THE HANDWRITING, WHICH IS MS. PETERSON'S

12:32PM 14 HANDWRITING, IT'S IDENTICAL. SO THE BOARD HAD THE SAME EXACT

12:33PM 15 INFORMATION THAT THE INVESTORS HAD. SO THEY WERE NOT HIDING

12:33PM 16 THIS FROM THE BOARD. THIS WAS JUST AN ILLUSTRIOUS GROUP OF

12:33PM 17 PEOPLE, INCLUDING IN THIS CASE A FORMER UNITED STATES SENATOR,

12:33PM 18 SAM NUNN.

12:33PM 19 IF WE GO TO THE NEXT SLIDE.

12:33PM 20 THIS IS EXHIBIT 20145. THIS IS ADDITIONAL INFORMATION

12:33PM 21 THAT SENATOR NUNN WAS PROVIDED BY THERANOS AND PRODUCED

12:33PM 22 PURSUANT TO A SUBPOENA. SO THIS IS ANOTHER PROJECTED STATEMENT

12:33PM 23 OF INCOME. YOU CAN SEE IT HAS THE SAME INFORMATION PROJECTING

12:33PM 24 NOT A FINANCIAL STATEMENT, BUT A PROJECTION FOR 2014, 2015.

12:33PM 25 AND THEN YOU CAN SEE THE HANDWRITING AS I READ IT, BUT YOU CAN

12:33PM 1 TRY TO MAKE IT OUT FOR YOURSELVES, WHICH IS OPTION VALUATION IS
12:33PM 2 WHAT THE HANDWRITING LOOKS LIKE.

12:33PM 3 AND YOU CAN SEE THERE ARE PROJECTIONS FOR 2014 AND 2015 OF
12:33PM 4 126 MILLION AND 929 MILLION FOR 2015.

12:33PM 5 AND IF WE GO TO THE NEXT PAGE.

12:34PM 6 THIS IS INCLUDED IN THE MATERIALS THAT SAM NUNN PROVIDED.
12:34PM 7 AND IT'S THE SAME PROJECTIONS THAT MS. SPIVEY WAS SHOWN. THIS
12:34PM 8 IS PROJECTIONS FOR I.R.S. CODE 409A. SO SENATOR NUNN HAD THIS
12:34PM 9 AS WELL.

12:34PM 10 IT PROJECTS REVENUE FOR 2014 OF \$930,000, 110 IN 2015, AND
12:34PM 11 220 IN 2016.

12:34PM 12 SO SAM NUNN HAD THE SAME INFORMATION THAT THE GOVERNMENT
12:34PM 13 WAS CLAIMING THAT WAS SOMEHOW FRAUDULENT BECAUSE THE
12:34PM 14 PROJECTIONS ARE LOWER FOR THIS SPECIAL PURPOSE AT 409A, BUT
12:34PM 15 SAM NUNN HAD THAT, TOO.

12:34PM 16 HE ALSO HAD, IF YOU GO TO THE NEXT PAGE, THE ACTUAL
12:34PM 17 HISTORICAL FINANCIALS FOR THERANOS. THIS WAS IN THE MATERIALS
12:34PM 18 THAT SENATOR NUNN WAS PROVIDED.

12:34PM 19 SO IT SHOWS THAT THE REVENUES, THE ACTUAL REVENUES FOR
12:35PM 20 THESE YEARS 2011, 2012, 2013, 2014, UP TO SEPTEMBER, RIGHT,
12:35PM 21 WHERE -- AND THIS IS IN THOUSANDS. SO THAT NUMBER FOR
12:35PM 22 SEPTEMBER 14TH, SEPTEMBER 2014 RATHER, WAS -- IS \$70,000.

12:35PM 23 SO SENATOR NUNN HAD INFORMATION FROM THERANOS THAT
12:35PM 24 THERANOS'S ACTUAL REVENUES WERE \$70,000. HE ALSO HAD IN HIS
12:35PM 25 POSSESSION THAT THEY WERE PROJECTING MUCH GREATER REVENUES IN

12:35PM 1 THE HUNDREDS OF MILLIONS IF THINGS WENT RIGHT WITH WALGREENS
12:35PM 2 AND OTHER BUSINESS THAT THERANOS HAD.

12:35PM 3 AND HE ALSO HAD PROJECTIONS THAT THE GOVERNMENT IS
12:35PM 4 CLAIMING ARE DIFFERENT THAT WENT TO ARANCA FOR THIS I.R.S. CODE
12:35PM 5 SECTION.

12:35PM 6 SO I DON'T KNOW IF THE GOVERNMENT IS CLAIMING THAT
12:35PM 7 SENATOR NUNN IS IN ON THE CONSPIRACY, TOO, BUT NO EVIDENCE THAT
12:35PM 8 THAT'S THE CASE. THESE ARE THE SORT OF LEADING LIKES IN OUR
12:36PM 9 SOCIETY WHO ARE ON THE BOARD AND HAD THIS VERY SAME
12:36PM 10 INFORMATION. SO THERE'S NO HIDING IT FROM THEM, AND THERE'S NO
12:36PM 11 SECRET HERE, AND THERE'S NO FRAUD. THAT'S REASONABLE DOUBT.

12:36PM 12 SO THE BOARD KNEW, AS I SAID, THAT THERANOS HAD LITTLE
12:36PM 13 REVENUE. THEY RECEIVED THE REVENUE PROJECTIONS PREPARED FOR
12:36PM 14 ARANCA AND HAD THE SAME FINANCIAL MODELS BASED ON THE WALGREENS
12:36PM 15 ROLLOUT THAT WAS SHARED WITH THE 2014 INVESTORS.

12:36PM 16 HOW DID THE BOARD CONTRIBUTE TO INVESTORS'S DECISION TO
12:36PM 17 INVEST?

12:36PM 18 MR. MOSLEY TESTIFIED THAT HE'S FAMILIAR WITH SOME OF THE
12:36PM 19 NAMES OF THE PEOPLE ON THE BOARD, EVEN APART FROM THERANOS, AT
12:36PM 20 LEAST MOST OF THEM.

12:36PM 21 HE THOUGHT IT WAS A VERY IMPRESSIVE BOARD, AND IT
12:36PM 22 CONTRIBUTED TO HIS DECISION TO INVEST. AND THAT'S
12:36PM 23 UNDERSTANDABLE.

12:36PM 24 CHRIS LUCAS TESTIFIED THAT IT WAS THE MOST PRESTIGIOUS
12:36PM 25 BOARD OF DIRECTORS OF A PRIVATE COMPANY AT THE TIME, AND IT

12:36PM 1 GAVE HIM A LOT OF CONFIDENCE IN WHAT WAS HAPPENING AT THE
12:36PM 2 COMPANY.

12:36PM 3 BRIAN GROSSMAN, AN EMAIL WHERE IT SAYS, "ONE OF THE MOST
12:37PM 4 IMPRESSIVE BOARDS I'VE EVER SEEN."

12:37PM 5 AND THEN MR. GROSSMAN'S PARTNER, CHRIS JAMES, WROTE
12:37PM 6 "WOWZY." THAT WAS THEIR REACTION.

12:37PM 7 SO DR. ROBERTSON, HE WAS ON THE BOARD EARLIER. BUT HE HAD
12:37PM 8 A CONVERSATION WITH MR. GROSSMAN, AND MR. GROSSMAN TESTIFIED
12:37PM 9 DID DR. ROBERTSON TELL -- DR. ROBERTSON TOLD YOU DURING YOUR
12:37PM 10 SECOND CALL WITH HIM THAT THERANOS WAS WAY BEYOND PROOF OF
12:37PM 11 CONCEPT. DID HE TELL YOU THAT.

12:37PM 12 YES.

12:37PM 13 QUESTION: AND HE ALSO SAID THE TECHNOLOGY WORKS; RIGHT?

12:37PM 14 YES.

12:37PM 15 AND HE TOLD YOU THAT HIS VIEW WAS THE TECHNOLOGY WORKED;
12:37PM 16 RIGHT?

12:37PM 17 THAT WAS HIS GENERAL MESSAGE, YES.

12:37PM 18 SO THIS WAS SOMETHING THAT MR. GROSSMAN WAS INFORMED OF BY
12:38PM 19 CHANNING ROBERTSON, AND, OF COURSE, IT INFLUENCED
12:38PM 20 MR. GROSSMAN'S DECISION TO INVEST WHEN THIS FORMER PROFESSOR AT
12:38PM 21 STANFORD, CHEMICAL ENGINEERING PROFESSOR, IS TELLING HIM THE
12:38PM 22 TECHNOLOGY WORKS. THAT WAS THE NOTICE THAT MR. GROSSMAN GOT.

12:38PM 23 MR. LUCAS, HE KNOWS OF CHANNING ROBERTSON. HE MET
12:38PM 24 CHANNING ROBERTSON. HE KNOWS THAT HE HAD A DISTINGUISHED AND
12:38PM 25 LONG CAREER AT STANFORD, AND HE KNEW HE WAS IN THE CHEMICAL

12:38PM 1 ENGINEERING DEPARTMENT. AND, IN FACT, HE WASN'T QUITE SURE IF
12:38PM 2 HE WAS A DEAN AT STANFORD, BUT THAT WAS HIS ANSWER.

12:38PM 3 MR. GROSSMAN REPORTED TO HIS PARTNER, CHRIS JAMES, ON
12:38PM 4 JANUARY 26TH, 2014, BEFORE HIS INVESTMENT, "I HAD A MIND
12:38PM 5 BLOWING CALL WITH ELIZABETH'S PROFESSOR WHO HELPED HER START
12:38PM 6 THIS. WAS THE ORIGINAL BOARD MEMBER."

12:38PM 7 SO THIS IS INFORMATION THAT PEOPLE ARE GETTING NOT FROM
12:38PM 8 MS. HOLMES OR MR. BALWANI EVEN, BUT FROM
12:38PM 9 MR. CHANNING ROBERTSON, THE STANFORD PROFESSOR.

12:38PM 10 AND MR. LUCAS WAS NOTIFIED THAT -- BY DR. ROBERTSON THAT
12:39PM 11 THERANOS'S TECHNOLOGY WORKED GREAT?

12:39PM 12 HE SAID YES.

12:39PM 13 THAT WAS IMPORTANT TO HIM?

12:39PM 14 HE SAID YES, VALIDATING.

12:39PM 15 SO THAT WAS THE INFORMATION THAT THOSE INVESTORS HAD.

12:39PM 16 NOW, BEYOND THAT, WHAT INVESTORS WERE TOLD BY
12:39PM 17 CHANNING ROBERTSON AND HOW THAT GAVE HIM COMFORT, MR. BALWANI
12:39PM 18 ALSO HAD EVERY REASON TO BELIEVE THAT THIS TECHNOLOGY WORKED,
12:39PM 19 AND I WANT TO GO THROUGH SOME OF THE REASONS WHY THAT'S TRUE.

12:39PM 20 BUT, FIRST, THIS IS ANOTHER INSTRUCTION THAT JUDGE DAVILA
12:39PM 21 WILL GIVE YOU. IT'S THE GOOD FAITH INSTRUCTION. AND YOU CAN
12:39PM 22 CONSIDER WHEN YOU'RE DELIBERATING WHETHER MR. BALWANI HAD AN
12:39PM 23 HONEST GOOD FAITH BELIEF IN THE TRUTH OF THE SPECIFIC
12:39PM 24 REPRESENTATIONS ALLEGED IN THE INDICTMENT IN DETERMINING
12:39PM 25 WHETHER OR NOT HE ACTED WITH INTENT TO DEFRAUD. SO GOOD FAITH

12:39PM 1 IS IMPORTANT FACTOR HERE. AND I WANT TO TALK ABOUT THAT
12:40PM 2 SUBJECT IN TERMS OF WHY MR. BALWANI BELIEVED IN THE TECHNOLOGY.

12:40PM 3 SO HERE ARE JUST SOME OF THE FACTS, SOME OF WHICH WE
12:40PM 4 REVIEWED AND SOME OF THESE WE WILL REVIEW, THAT LED MR. BALWANI
12:40PM 5 TO THE BELIEF THAT THE TECHNOLOGY WORKED, THAT THIS WAS A
12:40PM 6 COMPANY WORTHY OF HIS MULTIMILLION DOLLAR INVESTMENT, IT WAS A
12:40PM 7 COMPANY WORTHY OF HIS TIME, IT WAS A COMPANY WORTHY OF HIM
12:40PM 8 ASKING INVESTORS TO JOIN THE EFFORT TO MOVE THERANOS FORWARD,
12:40PM 9 AND IT WAS A COMPANY WORTHY OF PROVIDING TESTS TO PATIENTS AS
12:40PM 10 WELL BECAUSE THAT'S AN IMPORTANT PART OF THE TECHNOLOGY
12:40PM 11 WORKING.

12:40PM 12 SO FIRST OF ALL, IN DECEMBER OF 2009, GLAXOSMITHKLINE
12:40PM 13 COMPREHENSIVELY VALIDATED THE THERANOS SYSTEMS. THAT'S WHAT
12:40PM 14 MR. BALWANI WAS INFORMED. AND WE'VE SEEN THAT EMAIL. IT'S
12:40PM 15 EXHIBIT 15058.

12:40PM 16 IN 2010 TO 2013, THE COMPANY ENGAGED IN ASSAY DEVELOPMENT
12:41PM 17 WORK TO DEVELOP ALL OF THESE SMALL SAMPLE ASSAYS.

12:41PM 18 IN APRIL OF 2010, APRIL 27TH, JOHNS HOPKINS EVALUATED THE
12:41PM 19 TECHNOLOGY AND CONCLUDED, AMONG OTHER THINGS, THAT A SPECIAL
12:41PM 20 STRENGTH OF THE TECHNOLOGY WAS ACCURACY. AND MR. BALWANI WAS
12:41PM 21 IN THAT MEETING AT JOHNS HOPKINS.

12:41PM 22 IN SEPTEMBER OF 2010 THERANOS SENT ANALYZERS TO THE ARMY
12:41PM 23 FOR A STUDY ABOUT HOW PATIENTS WHO WERE BURN VICTIMS COULD BE
12:41PM 24 TREATED, AND THE THERANOS TECHNOLOGY WAS USED IN MONITORING
12:41PM 25 THOSE PATIENTS WHEN THEY WERE UNDERGOING THAT STUDY. SO THAT

12:41PM 1 WAS ANOTHER -- WE'LL TALK ABOUT THAT MORE, BUT THAT WAS ANOTHER
12:41PM 2 MULTI-YEAR STUDY WHERE THE THERANOS TECHNOLOGY WAS BEING USED,
12:41PM 3 AND IT ACTUALLY RESULTED IN A PEER REVIEW ARTICLE IN A MEDICAL
12:41PM 4 JOURNAL.

12:41PM 5 IN OCTOBER 19TH, 2010, DR. GIBBONS INFORMED MR. BALWANI OF
12:42PM 6 A SCIENTIFIC BREAKTHROUGH. WE'VE SEEN THAT EMAIL YESTERDAY
12:42PM 7 WHERE DR. GIBBONS SAID AND DEMONSTRATED THIS TECHNOLOGY ACROSS
12:42PM 8 ALL OF THE FOUR TYPES OF TECHNOLOGY, SO CYTOMETRY, GENERAL
12:42PM 9 CHEMISTRY, IMMUNOASSAYS, AND NUCLEIC ACID AMPLIFICATION.

12:42PM 10 BETWEEN 2011 AND 2013, WALGREENS HAD A THERANOS DEVICE, AN
12:42PM 11 ANALYZER FOR THEMSELVES TO CONDUCT TESTING WITH. SO THERE'S NO
12:42PM 12 SECRET THERE. IF WALGREENS THOUGHT THE DEVICE DIDN'T WORK,
12:42PM 13 THEY COULD HAVE SAID WE'RE PULLING THE PLUG ON THIS, WE'RE NOT
12:42PM 14 GOING TO LAUNCH, WE'RE NOT GOING DOING ANYTHING. BUT THAT'S
12:42PM 15 NOT WHAT HAPPENED. AND THAT WAS ALL BEFORE THE LAUNCH.

12:42PM 16 DR. ROSENDORFF, OF COURSE, SIGNED 57 VALIDATION REPORTS.
12:42PM 17 THAT WOULD HAVE GIVEN MR. BALWANI GREAT CONFIDENCE IN THE
12:43PM 18 TECHNOLOGY. THOSE ARE VALIDATION REPORTS DONE AFTER EARLIER
12:43PM 19 ASSAY DEVELOPMENT WORK THAT ARE DESIGNED TO SHOW HEAD-TO-HEAD
12:43PM 20 COMPARISONS WITH FDA PREDICATE MACHINES. DR. ROSENDORFF WAS
12:43PM 21 COMFORTABLE PUTTING HIS NAME ON IT, AS WAS DR. YOUNG, THAT
12:43PM 22 THESE WERE TESTS WORTHY OF USE IN THE CLINICAL SETTING.

12:43PM 23 THERANOS RECEIVED THAT CLIA CERTIFICATE OF COMPLIANCE.
12:43PM 24 THAT'S AFTER THAT DECEMBER 2013 INSPECTION THAT I TALKED ABOUT
12:43PM 25 EARLIER, THE LAB WAS GIVEN A CERTIFICATE OF COMPLIANCE. WE SAW

12:43PM 1 THAT DOCUMENT EARLIER.

12:43PM 2 DR. ROSENDORFF REPORTED THAT HE TOLD A PHYSICIAN THAT
12:43PM 3 THERANOS HAD NO MORE ISSUES, PHYSICIAN INQUIRIES THAN THE
12:43PM 4 UNIVERSITY OF PITTSBURGH WHEN HE WAS THERE.

12:43PM 5 AND THAT AS WE SAW JUST BEFORE THE BREAK, THE ALTERNATIVE
12:43PM 6 ASSESSMENT PROCEDURE WAS CONSISTENTLY SCORING AT 100 PERCENT.

12:43PM 7 AND THEN, OF COURSE, ON JULY 7TH, 2015, MR. BALWANI WAS
12:44PM 8 NOTIFIED THAT THERANOS RECEIVED FDA APPROVAL FOR THE HSV-1
12:44PM 9 ASSAY RUNNING ON THERANOS APPLICATIONS. THAT APPLICATIONS WAS
12:44PM 10 IN NOVEMBER 2014. SO IT TOOK MANY MONTHS FOR THE FDA TO MAKE
12:44PM 11 THAT APPROVAL.

12:44PM 12 BUT CERTAINLY IF NOTHING ELSE, IF YOU'RE SUBMITTING YOUR
12:44PM 13 SYSTEM, EVEN IF IT'S ONLY ONE ASSAY, AND THE FDA APPROVES IT,
12:44PM 14 THAT WOULD GIVE MR. BALWANI GREAT CONFIDENCE THAT THE
12:44PM 15 TECHNOLOGY ACTUALLY WORKS.

12:44PM 16 BECAUSE IF IT CAN RUN AN HSV-1 ASSAY, WE HAVE SEEN THIS
12:44PM 17 BEFORE, THERE ARE OTHER ASSAYS. THE MACHINE IS THE SAME
12:44PM 18 MACHINE. SO THERE'S NO REASON FOR MR. BALWANI TO THINK, OH, IT
12:44PM 19 CAN ONLY DO ONE ASSAY. NO. IT'S THE THERANOS SYSTEM, AND THAT
12:44PM 20 IS WHAT WAS APPROVED BY THE FDA AND AGAIN AFTER MANY MONTHS.

12:44PM 21 AND HERE'S THE ACTUAL DOCUMENTS THAT GO TO THE FDA
12:44PM 22 APPROVAL.

12:44PM 23 SO MS. HOLMES SENDS AN EMAIL ON JULY 2ND, 2015. SHE SAYS,
12:44PM 24 "IT IS WITH INCREDIBLE PRIDE THAT I OFFICIALLY LET YOU KNOW WE
12:45PM 25 HAVE RECEIVED OUR FIRST FDA CLEARANCE IN OUR SYSTEM, AND THE

12:45PM 1 FIRST LABORATORY DEVELOPED TEST WE FILED: HSV-1."

12:45PM 2 SO THAT WAS MS. HOLMES'S ANNOUNCEMENT TO THE EMPLOYEES AT
12:45PM 3 THERANOS.

12:45PM 4 AND THEN THERE WAS A SLIDE PRESENTATION THAT MR. EDLIN
12:45PM 5 TALKED ABOUT THAT MR. BALWANI WAS AWARE OF BECAUSE HE WAS
12:45PM 6 THERE, AND MR. BALWANI RECEIVED THIS INFORMATION ABOUT WHAT
12:45PM 7 WENT INTO THAT; RIGHT?

12:45PM 8 FIRST OF ALL, IT'S A MAJOR MILESTONE FOR THERANOS. THIS
12:45PM 9 IS THE ANNOUNCEMENT. IT'S THE CLEARANCE GIVEN FOR THE TEST
12:45PM 10 SYSTEM RUNNING HSV-1. THIS IS -- THAT K NUMBER IS THE FDA
12:45PM 11 CLEARANCE NUMBER. THERANOS RECEIVED FDA CLEARANCE AND REVIEW
12:45PM 12 AND VALIDATION OF REVOLUTIONARY FINGERSTICK TECHNOLOGY, TEST,
12:45PM 13 AND ASSOCIATED TEST SYSTEM.

12:45PM 14 SO IT'S IMPORTANT THAT IT'S NOT JUST SOME ISOLATED ASSAYS.
12:45PM 15 IT IS THAT HSV-1 ASSAY, BUT IT'S RUNNING ON THE THERANOS
12:46PM 16 SYSTEM, AND IT'S RUNNING WITH THE NANOTAINER, THE WHOLE
12:46PM 17 PACKAGE, AND THAT'S WHAT MR. BALWANI WAS MADE AWARE OF.

12:46PM 18 IF WE GO TO THE NEXT SLIDE.

12:46PM 19 SO THIS IS WHAT MR. BALWANI WAS INFORMED IT TOOK TO
12:46PM 20 ACTUALLY GET TO THAT POINT OF FDA APPROVAL FOR THAT PARTICULAR
12:46PM 21 TEST RUNNING ON THE THERANOS SYSTEM. OVER 13,000 CARTRIDGES
12:46PM 22 WERE RUN; 17,000 MAN HOURS; 1.1 MILLION PROTOCOL RUN TIME;
12:46PM 23 78 4S DEVICES, AND WE'VE SEEN A PICTURE OF THE 4S YESTERDAY;
12:46PM 24 4,506 CAPILLARY TUBES AND NANOTAINERS WERE COLLECTED BECAUSE OF
12:46PM 25 THE SAMPLES; 2,750-PLUS PIECES OF FLUID PIPETTED; 146 DOCUMENTS

12:46PM 1 SUBMITTED; AND 2900 PAGES SUBMITTED TO THE FDA. THAT'S WHAT IT
12:46PM 2 TOOK, MR. BALWANI WAS INFORMED, TO GET TO THE POINT OF FDA
12:46PM 3 APPROVAL.

12:47PM 4 NOW, LET ME POSE THIS QUESTION. SO IF THAT'S, IN FACT,
12:47PM 5 WHAT IT TAKES TO GET FDA APPROVAL, IN OTHER WORDS, FOR THE FDA
12:47PM 6 TO LOOK AT THE DATA AND TO SAY, OKAY, AFTER MANY MONTHS WE'RE
12:47PM 7 SATISFIED THAT THIS TECHNOLOGY WORKS, IF THAT'S WHAT IT TAKES,
12:47PM 8 FOR THE GOVERNMENT TO PROVE IN A SCIENTIFIC FRAUD CASE THAT THE
12:47PM 9 TECHNOLOGY DOESN'T WORK AND MR. BALWANI KNOWS THAT, AND THAT
12:47PM 10 HE'S GOING FORWARD WITH PATIENT TESTING ANYWAY, AND HE'S GOING
12:47PM 11 FORWARD WITH INVESTOR SOLICITATION ANYWAY, SHOULDN'T THE
12:47PM 12 GOVERNMENT HAVE TO DO SOME TYPE OF RIGOROUS SCIENTIFIC ANALYSIS
12:47PM 13 HERE?

12:47PM 14 AND THERE'S ONLY ONE WAY TO DO THAT, AND THAT'S THROUGH
12:47PM 15 THE LABORATORY INFORMATION SYSTEM THAT HAD ALL OF THE DATA,
12:47PM 16 THAT HAD ALL OF THE PATIENT'S TESTING.

12:47PM 17 AND IF THIS IS WHAT IT TAKES TO GET ANOTHER GOVERNMENT
12:47PM 18 AGENCY, THE FDA, TO APPROVE SOMETHING, SHOULDN'T THE GOVERNMENT
12:47PM 19 HAVE TO MEET EVEN SOME OF THAT SAME STANDARD AS OPPOSED TO
12:47PM 20 PRESENTING A FEW PEOPLE WHO SAID I'VE GOT AN ACCURATE TEST,
12:47PM 21 FOUR PEOPLE?

12:48PM 22 I THINK THAT'S AN IMPORTANT QUESTION TO KEEP IN MIND AS WE
12:48PM 23 GO THROUGH THIS AND YOU START YOUR DELIBERATIONS IS WHY ISN'T
12:48PM 24 THERE SOME SCIENTIFICALLY RIGOROUS PROOF HERE IF THE GOVERNMENT
12:48PM 25 IS CLAIMING, AS THEY ARE, THAT THE TECHNOLOGY DOESN'T WORK AND

12:48PM 1 THAT MR. BALWANI KNEW THAT.

12:48PM 2 AS WE KNOW, THE FDA DID APPROVE. AND THIS IS THE WEBSITE
12:48PM 3 FROM THE FDA. THIS IS EXHIBIT 20817. YOU CAN SEE IN THE VERY
12:48PM 4 BOTTOM THIS WEBSITE WAS RETRIEVED ON MAY 18TH, 2022. SO IT'S
12:48PM 5 STILL UP ON THE FDA WEBSITE.

12:48PM 6 YOU CAN SEE THE DATE RECEIVED FOR THE FDA IS
12:48PM 7 NOVEMBER 12TH, 2014. AND THAT WOULD MEAN THAT ALL OF THAT WORK
12:48PM 8 HAD TO BE DONE BY NOVEMBER 2014 IN ORDER TO SUBMIT TO THE FDA
12:48PM 9 THE APPLICATION THAT RESULTED IN THE JULY 2015 APPROVAL.

12:49PM 10 SO THAT'S THE FDA WEBSITE.

12:49PM 11 AND THEN IF YOU LOOK AT WHAT'S BEHIND THOSE LINKS, THIS IS
12:49PM 12 THE LETTER FROM SALLY HOJVAT, WHO IS A DIRECTOR OF THE DIVISION
12:49PM 13 OF MICROBIOLOGY DEVICES AT THE FDA, AND SHE WRITES, "WE HAVE
12:49PM 14 REVIEWED YOUR SECTION 510(K) PREMARKET NOTIFICATION OF INTENT
12:49PM 15 TO MARKET THE DEVICE REFERENCED ABOVE AND HAVE DETERMINED THE
12:49PM 16 DEVICE IS SUBSTANTIALLY EQUIVALENT TO LEGALLY MARKETED
12:49PM 17 PREDICATE DEVICES MARKETED IN INTERSTATE COMMERCE."

12:49PM 18 SO THIS IS THE 4S DEVICE, AND THAT IS WHAT THE FDA
12:49PM 19 CONCLUDED AFTER A LENGTHY REVIEW.

12:49PM 20 IT'S NOT ONLY THE APPROVAL ITSELF, BUT THERE'S ALSO THIS
12:49PM 21 OTHER DOCUMENT, WHICH IS CALLED A CLIA WAIVER LETTER.

12:49PM 22 SO YOU'LL SEE THAT MR. EDLIN TESTIFIED A LITTLE BIT ABOUT
12:49PM 23 THIS. THERE'S ANOTHER PROCEDURE IN ADDITION TO THE CLEARANCE
12:50PM 24 THAT WE JUST LOOKED AT, WHICH IS THE WAIVER ALLOWS THE COMPANY
12:50PM 25 LIKE THERANOS TO USE THE TECHNOLOGY OUTSIDE OF THE CLIA LAB,

12:50PM 1 LIKE IN A FIELD LOCATION, LIKE A WALGREENS STORE OR A MILITARY
12:50PM 2 FIELD HOSPITAL, OR A PHYSICIAN'S OFFICE OR WHATEVER. AND
12:50PM 3 THAT'S WHAT YOU WOULD NEED TO DO THAT. THAT'S WHAT MR. EDLIN
12:50PM 4 SAID, IT'S THE CLIA WAIVER DOCUMENT. THERANOS ALSO GOT THAT
12:50PM 5 FOR HSV.

12:50PM 6 AND AS YOU'VE HEARD DURING THE COURSE OF THE TRIAL, THE
12:50PM 7 WALGREENS-THERANOS RELATIONSHIP HAD THIS PHASE I AND PHASE II
12:50PM 8 APPROACH. PHASE I WAS I'M GOING TO COLLECT THE BLOOD SAMPLES
12:50PM 9 IN THE WALGREENS STORES, SHIP THEM TO A CENTRAL LAB AT
12:50PM 10 THERANOS, AND TEST THEM THERE.

12:50PM 11 THE PHASE II MODEL WOULD BE TO ACTUALLY PUT THE DEVICES IN
12:50PM 12 THE WALGREENS STORES OR IN A PHYSICIAN'S OFFICE OR IN A
12:50PM 13 HOSPITAL OR WHEREVER. AND THAT REQUIRED THE FDA APPROVAL.

12:50PM 14 SO THIS CLIA WAIVER, THAT WAS ON THE PATH, AND NOW IT WAS
12:50PM 15 ONLY THAT ONE ASSAY, BUT THAT WAS THE FIRST ONE.

12:50PM 16 AND THAT WAS THE GOAL.

12:51PM 17 SO THIS IS THE CLIA WAIVER. AND IF YOU LOOK AT THE
12:51PM 18 DOCUMENT, THAT WAS GRANTED. AND THAT'S THE SAME TEST SYSTEM
12:51PM 19 THAT I JUST IDENTIFIED BEFORE.

12:51PM 20 AND THIS IS THE TESTIMONY OF MR. EDLIN. I WON'T READ IT,
12:51PM 21 BUT HE TALKS ABOUT HOW THE CLIA WAIVER ALLOWS YOU TO PUT THE
12:51PM 22 DEVICE IN SOME CLIA LOCATION, LIKE A WALGREENS STORE.

12:51PM 23 OKAY. I WANT TO TALK ABOUT THE WALGREENS RELATIONSHIP.
12:51PM 24 THIS IS REALLY AT THE HEART OF THIS CASE FOR TWO REASONS. ONE,
12:51PM 25 ON THE PATIENT SIDE, THESE WERE THE PATIENTS WHO WERE BEING

12:51PM 1 TESTED, HAVING THEIR BLOOD TESTED AT THERANOS. THEY WERE
12:51PM 2 PATIENTS WHO WENT TO THE WALGREENS STORES AND GOT TESTED. SO
12:51PM 3 IT'S IMPORTANT FOR THAT REASON.

12:51PM 4 IT'S ALSO IMPORTANT BECAUSE WALGREENS AND THAT
12:52PM 5 RELATIONSHIP WAS THE REALLY BIG DRIVER OF INVESTMENT IN
12:52PM 6 THERANOS THAT YOU'VE HEARD ABOUT.

12:52PM 7 SO WHEN YOU TALK ABOUT THE 2013 INVESTORS LIKE MR. LUCAS
12:52PM 8 OR MR. EISENMAN OR MR. TOLBERT AND THE HALL GROUP, OR EVEN JUST
12:52PM 9 A LITTLE LATER, A COUPLE MONTHS LATER, MR. GROSSMAN, IN EARLY
12:52PM 10 '14, THE BIG DRIVER HERE WAS WALGREENS. AND THAT'S, THAT'S --
12:52PM 11 THAT RELATIONSHIP AND ITS POSSIBILITY OF EXPANDING TO HUNDREDS
12:52PM 12 OR THOUSANDS OF STORES, THAT'S WHAT WAS THERE TO MAKE THERANOS
12:52PM 13 A UNICORN, TO USE THE LANGUAGE I USED WITH MR. LUCAS WHEN HE
12:52PM 14 WAS ON THE STAND. THAT'S HOW THESE ALREADY VERY WEALTHY,
12:52PM 15 POWERFUL PEOPLE GET EVEN MORE WEALTHY, IS FOR WALGREENS AND THE
12:52PM 16 THERANOS RELATIONSHIP TO REALLY THRIVE, THOUSANDS OF STORES.

12:52PM 17 THEY HAVE TO GO, BY THE WAY, FROM A FEW STORES IN 2013
12:52PM 18 WITH 3 STORES, AND IN 2014 WHEN RDV AND MOSLEY INVESTED IT WAS
12:53PM 19 BY 40 STORES. BUT YOU WOULD HAVE TO GO FROM THAT TO HUNDREDS
12:53PM 20 OR THOUSANDS OF STORES, AND WE ALL RECOGNIZE THAT'S A BIG
12:53PM 21 CHALLENGE.

12:53PM 22 BUT NONETHELESS, THIS WAS THE DRIVER. THIS WAS THE BIG
12:53PM 23 CARROT THAT WOULD HAVE MADE THIS RISKY INVESTMENT WORTHWHILE.
12:53PM 24 SO LET'S START OF TALK ABOUT THAT TOPIC.

12:53PM 25 SO MR. LUCAS, QUESTION: AND THAT'S WHAT YOU'RE HOPING FOR

12:53PM 1 IS THAT YOU'RE GOING TO BE INVESTING IN SOMETHING THAT TURNS
12:53PM 2 OUT TO BE A UNICORN?

12:53PM 3 HE SAYS YES. AND ONE WOULD THINK AT THE TIME, GIVEN THE
12:53PM 4 ROLLOUT OF WALGREENS, THAT WOULD HAVE BEEN THE BEGINNING.

12:53PM 5 MR. LUCAS AGAIN. IN ADDITION, YOU KNEW THAT WALGREENS WAS
12:53PM 6 PARTNERING WITH THERANOS?

12:53PM 7 HE SAYS THANK YOU. THAT PROBABLY WAS THE EXCLAMATION
12:53PM 8 POINT, THAT THEY HAD A DEAL WITH WALGREENS, WE'RE ROLLING OUT
12:53PM 9 AND NOW WE'RE GOING TO HAVE SOME REAL REVENUE.

12:53PM 10 MR. LUCAS AGAIN.

12:53PM 11 HE SAYS AND YOU WOULD HOPE AND DREAM A COMPANY THE SIZE OF
12:54PM 12 WALGREENS WOULD WANT TO ROLL OUT YOUR TECHNOLOGY. THAT WAS
12:54PM 13 EXTREMELY VALIDATING.

12:54PM 14 MR. TOLBERT, AND ON THE INVESTMENT SIDE, IT WOULD HAVE
12:54PM 15 MADE IT A VERY PROFITABLE INVESTMENT, REFERRING TO WALGREENS.

12:54PM 16 MR. LUCAS, AND WAS THE STATUS OF THAT PARTNERSHIP, THE
12:54PM 17 WALGREENS PARTNERSHIP, RELEVANT TO YOUR VIEW OF THE COMPANY'S
12:54PM 18 TECHNOLOGY?

12:54PM 19 PARAMOUNT.

12:54PM 20 WHY WAS THAT?

12:54PM 21 BECAUSE WALGREENS WAS GETTING READY TO ROLL IT OUT
12:54PM 22 NATIONALLY, AND THAT WAS VERY EXCITING AND VALIDATING FOR THE
12:54PM 23 COMPANY.

12:54PM 24 MS. PETERSON, SO YOU HAD A PARTICULAR INTEREST IN WHAT WAS
12:54PM 25 GOING ON WITH WALGREENS?

12:54PM 1 YES. THE CONTRACTS WERE PARAMOUNT TO OUR INVESTMENT
12:54PM 2 DECISION.

12:54PM 3 THE WALGREENS PROGRAM WAS, LIKE, REALLY IMPORTANT TO
12:54PM 4 MAKING THE DECISION; RIGHT?

12:54PM 5 YES.

12:54PM 6 HER WORD, "PARAMOUNT."

12:54PM 7 BRIAN GROSSMAN TALKED ABOUT WALGREENS AS A POWERFUL BRAND
12:54PM 8 AND A LARGE NATIONAL FOOTPRINT, AND HAD SIGNIFICANT EXPERIENCE
12:54PM 9 IN RETAIL OPERATIONS, AND IT WAS A FACTOR ULTIMATELY IN HIS
12:55PM 10 DECISION TO INVEST.

12:55PM 11 MR. MOSLEY, WHEN YOU LEARNED ABOUT THE RELATIONSHIP WITH
12:55PM 12 WALGREENS AND THE PUBLIC LAUNCH, THAT WAS IMPORTANT TO YOUR
12:55PM 13 ULTIMATE DECISION?

12:55PM 14 IT WAS.

12:55PM 15 AND THE REASON THAT WAS IMPORTANT WAS BECAUSE, ONE, YOU
12:55PM 16 KNEW THAT WALGREENS WAS A SIGNIFICANT NATIONAL AND EVEN
12:55PM 17 INTERNATIONAL RETAILER?

12:55PM 18 THAT'S CORRECT.

12:55PM 19 IT WOULD HELP THERANOS TAKES ITS BUSINESS NATIONWIDE?

12:55PM 20 THAT'S CORRECT.

12:55PM 21 SO ALL OF THESE INVESTORS -- HERE'S BRIAN GROSSMAN.

12:55PM 22 "BEYOND THAT, THE WAG ENDORSEMENT OBVIOUSLY SPEAKS TO
12:55PM 23 STRENGTH AND ROBUSTNESS OF THE TECHNOLOGY PLATFORM."

12:56PM 24 SO ALL OF THESE INVESTORS, JUST PAUSING HERE FOR A MINUTE,
12:56PM 25 THEY UNDERSTOOD THAT WALGREENS WAS REALLY THE TICKET. THAT

12:56PM 1 WAS THE MAIN DRIVER HERE.

12:56PM 2 AND I SHOWED YOU ALL OF THOSE SLIDES IN THAT TESTIMONY
12:56PM 3 BECAUSE AGAIN AND AGAIN THESE INVESTORS UNDERSTOOD, THIS IS
12:56PM 4 WHAT WOULD MAKE THIS INVESTMENT WORTHWHILE, THIS RISKY
12:56PM 5 INVESTMENT, THIS IS WHY IT WAS WORTHWHILE.

12:56PM 6 AND THEY UNDERSTOOD THE RISKS. MS. PETERSON SAID IT WAS
12:56PM 7 EXECUTION RISK IN THE ABILITY TO ROLL OUT IN WALGREENS STORES;
12:56PM 8 MR. MOSLEY SAID THE SAME THING; MR. TOLBERT SAID THE SAME
12:56PM 9 THING. EXECUTION RISK.

12:56PM 10 EXECUTION RISK MEANS THAT YOU'RE GOING TO HAVE TO GO FROM
12:56PM 11 3 STORES OR 40 STORES LATER AND TO HUNDREDS OF THOUSANDS OF
12:56PM 12 STORES. AND AS WE SAW, AND WE WILL GET INTO THIS SOME MORE, IN
12:56PM 13 THE PARTNERSHIP MEETING MINUTES, ALL OF THOSE MEETINGS BETWEEN
12:56PM 14 THERANOS AND WALGREENS THAT I WENT THROUGH WITH MR. JHAVERI
12:56PM 15 WHEN HE WAS TESTIFYING, THERE'S A LOT OF PEOPLE INVOLVED, AND A
12:56PM 16 LOT OF DISCUSSION, AND A LOT OF COMPLEXITY, AND THESE THINGS
12:56PM 17 HAVE A LOT OF MOVING PARTS. AND SO, OF COURSE, THESE
12:56PM 18 SOPHISTICATED INVESTORS UNDERSTOOD THAT THERE WAS EXECUTION
12:57PM 19 RISK, MEANING IT MIGHT NOT WORK OUT.

12:57PM 20 LET'S GO TO THE NEXT SLIDE.

12:57PM 21 DAN MOSLEY SAID, REGARDING THE JOHNS HOPKINS EVALUATION OF
12:57PM 22 THERANOS, THAT HE UNDERSTOOD IT TO BE A VALIDATION OF
12:57PM 23 THERANOS'S TECHNOLOGY BY JOHNS HOPKINS, AND IT WAS SIGNIFICANT
12:57PM 24 TO HIS DECISION TO INVEST.

12:57PM 25 WELL, THAT REALLY HAPPENED. THIS IS NOT SOMETHING THAT

12:57PM 1 MR. BALWANI MADE UP. JOHNS HOPKINS'S PHYSICIANS LOOKED AT THE
12:57PM 2 TECHNOLOGY, AND THEY SAID IT HAD NO MAJOR WEAKNESSES AND
12:57PM 3 AMONGST ITS STRENGTHS WAS ACCURACY. THAT WAS IMPORTANT TO
12:57PM 4 MR. MOSLEY AND RIGHTFULLY SO.

12:57PM 5 PATRICK MENDENHALL, HE ASSUMED THAT THE COMPANY THE SIZE
12:57PM 6 OF WALGREENS WOULD HAVE DONE THEIR HOMEWORK BEFORE PARTNERING
12:57PM 7 WITH THERANOS. AND AS WE WILL SEE, THEY DID.

12:57PM 8 STARTING WITH JOHNS HOPKINS'S REPORT, HERE IT IS. THE
12:58PM 9 JOHNS HOPKINS, THIS IS A REPORT OF A MEETING, SUMMARY, FROM
12:58PM 10 APRIL 27TH, 2010. YOU CAN SEE THE ATTENDEES ARE
12:58PM 11 DR. FREDERICK BRANCATI, PROFESSOR OF MEDICINE; DR. THOMAS
12:58PM 12 KICKER, PROFESSOR OF MEDICINE; AND DR. WILLIAM CLARK, ASSOCIATE
12:58PM 13 PROFESSOR OF PATHOLOGY.

12:58PM 14 AND FROM WALGREENS, DR. JAY ROSAN, ANOTHER WITNESS THE
12:58PM 15 GOVERNMENT DIDN'T CALL, BUT THERE HE IS ATTENDING THE
12:58PM 16 JOHNS HOPKINS MEETING; AND THEN ELIZABETH HOLMES AND
12:58PM 17 SUNNY BALWANI ARE ATTENDING AS WELL; AND THEN THERE'S A PERSON
12:58PM 18 FROM A COMPANY CALLED INNOSIGHT.

12:58PM 19 MEETING OBJECTIVES. THE "HOPKINS TEAM WAS ASKED TO
12:58PM 20 COMMENT ON THE VALIDITY AND USEFULNESS OF THE THERANOS PRODUCT,
12:58PM 21 SPECIFICALLY RELATED TO THE SCIENCE THAT SUPPORTS THE
12:58PM 22 TECHNOLOGY AND THE APPLICATION OF THE TECHNOLOGY IN A VARIETY
12:58PM 23 OF SETTINGS INCLUDING HOSPITAL, CLINIC, LABORATORY, AND
12:58PM 24 POTENTIALLY WITHIN WALGREENS AS AN ADD ON TO THE CLINICAL
12:58PM 25 PROGRAMS AND RETAIL PHARMACY BUSINESS THAT CURRENTLY EXISTS."

12:59PM 1 SO KEEP IN MIND, AND THIS IS WHAT MR. JHAVERI SAID,
12:59PM 2 THERANOS DIDN'T HIRE JOHNS HOPKINS. WALGREENS HAD A
12:59PM 3 RELATIONSHIP WITH JOHNS HOPKINS.

12:59PM 4 AND WE SAW DURING MR. JHAVERI'S EXAMINATION, THEY WERE
12:59PM 5 USING JOHNS HOPKINS FOR A LOT OF CONSULTING BECAUSE WALGREENS
12:59PM 6 FUNDAMENTALLY IS IN THE HEALTH CARE BUSINESS. THEY'RE A
12:59PM 7 PHARMACY COMPANY. THEY SELL OTHER THINGS, TOO. BUT THEY WERE
12:59PM 8 INTERESTED IN EXPANDING THEIR HEALTH CARE PRESENCE WITH CLINICS
12:59PM 9 AND BLOOD TESTING, AND SO THEY RELIED ON JOHNS HOPKINS.
12:59PM 10 WALGREENS HIRED THEM, NOT THERANOS. THIS WAS WALGREENS
12:59PM 11 CONSULTANT.

12:59PM 12 SO YOU TALK ABOUT THE INVESTORS'S VIEW THAT, WELL, A BIG
12:59PM 13 COMPANY LIKE WALGREENS, THEY WOULD DO THEIR DUE DILIGENCE.
12:59PM 14 WELL, THIS IS THE FIRST THING THAT THEY DID. AND THIS WAS
12:59PM 15 BEFORE WALGREENS SIGNED ANY AGREEMENT WITH THERANOS. THAT
12:59PM 16 AGREEMENT CAME LATER IN 2010. THIS WAS IN APRIL OF 2010.

12:59PM 17 SO LET'S GO ON AND LOOK AT THE REST OF THE DOCUMENT.

12:59PM 18 SO HERE ARE THE KEY FINDINGS FROM THE JOHNS HOPKINS'S
12:59PM 19 PHYSICIAN TEAM.

01:00PM 20 "BASED ON THIS EVALUATION, THE CONSENSUS OF THE HOPKINS
01:00PM 21 TEAM WAS AS FOLLOWS:

01:00PM 22 "THE TECHNOLOGY IS NOVEL AND SOUND. IT CAN ACCURATELY RUN
01:00PM 23 A WIDE RANGE OF ROUTINE AND SPECIAL ASSAYS.

01:00PM 24 "THE TECHNOLOGY IS SIMILAR ENOUGH TO BE USED BY
01:00PM 25 NONSPECIALISTS IN FIELD.

01:00PM 1 "SPECIAL STRENGTHS OF THE TECHNOLOGY INCLUDE:

01:00PM 2 "ACCURACY;

01:00PM 3 "MINIATURIZATION;

01:00PM 4 "FLEXIBILITY;

01:00PM 5 "CONNECTIVITY; AND

01:00PM 6 "ADAPTABILITY FOR RESEARCH."

01:00PM 7 IT GOES ON. THE SECOND TO LAST BULLET. ONE OBSERVATION

01:00PM 8 THAT THERANOS TECHNOLOGY IS NOT REALLY POINT OF CARE

01:00PM 9 TECHNOLOGY, IT'S REALLY A TRADITIONAL LAB ASSAY APPROACH, WITH

01:00PM 10 THE ATTENDANT ACCURACY AND VALIDITY, HIGHLY MINIATURIZED,

01:00PM 11 ESSENTIALLY A MINILAB. THAT'S JOHNS HOPKINS.

01:00PM 12 AND THEN THEY SAY, "NO MAJOR WEAKNESSES WERE IDENTIFIED."

01:00PM 13 SO BASED ON ATTENDING THAT MEETING AND HEARING THIS, WOULD

01:00PM 14 MR. BALWANI HAVE A VIEW THAT THE TECHNOLOGY WORKED? WOULD

01:00PM 15 INVESTORS? OF COURSE, THEY WOULD.

01:00PM 16 AND WOULD THIS LEAD MR. BALWANI TO INVEST HIS MONEY IN

01:01PM 17 THERANOS? IT DID. HE INVESTED \$4.6 MILLION IN THERANOS.

01:01PM 18 OKAY. I SAID BEFORE, AND I'LL SAY AGAIN, THAT WALGREENS

01:01PM 19 DIDN'T JUST TAKE A FIRE TO THIS AND TRUST THERANOS, OH, YEAH,

01:01PM 20 MAYBE THEIR DEVICE WORKS. THEY HAD THE DEVICE.

01:01PM 21 THIS WAS AN EMAIL FROM JULY OF 2013 FROM TIM KEMP TO

01:01PM 22 MR. BALWANI AND OTHERS, INCLUDING MR. EDLIN. AND THIS

01:01PM 23 PARTICULAR READER -- REMEMBER, THE READERS ARE THE EDISON

01:01PM 24 DEVICES. THIS IS BEING REGISTERED AT WALGREENS. SO WALGREENS

01:01PM 25 STILL HAD THE DEVICE EVEN AS LATE AS JULY OF 2013.

01:01PM 1 HERE'S WHAT THE GOVERNMENT TRIES TO SUGGEST TO MR. EDLIN:

01:01PM 2 DO YOU KNOW, FOR EXAMPLE, WHETHER THE DEVICE WAS CAPABLE
01:01PM 3 OF RUNNING ASSAYS?

01:01PM 4 DAN EDLIN DIDN'T KNOW. HE SAID NO.

01:01PM 5 DO YOU KNOW WHETHER THE THERANOS PROVIDED THE CARTRIDGES
01:01PM 6 AND REAGENTS THAT WOULD BE NECESSARY TO ACTUALLY USE THE DEVICE
01:02PM 7 AS AN ANALYZER?

01:02PM 8 HE SAID I DIDN'T.

01:02PM 9 SO THE SUGGESTION THERE IS, WELL, MAYBE WALGREENS HAD THE
01:02PM 10 DEVICE, BUT MAYBE IT WAS KIND OF LIKE A BRICK SITTING IN THE
01:02PM 11 CORNER, AND NO ONE COULD USE IT, AND NO ONE COULD DO ANYTHING
01:02PM 12 WITH IT. AND IT COULDN'T TEST IT BECAUSE, OF COURSE, YOU NEED
01:02PM 13 REAGENTS AND YOU NEED CARTRIDGES IN ORDER TO USE THE DEVICE AS
01:02PM 14 OPPOSED TO JUST LOOKING AT IT.

01:02PM 15 AND SO THAT'S NOT TRUE.

01:02PM 16 LET'S GO TO THE NEXT SLIDE.

01:02PM 17 AND THIS IS PATTY HAWORTH. YOU MIGHT REMEMBER HER. SHE
01:02PM 18 WAS THE PERSON WHO KEPT ALL OF THE MEETING MINUTES IN THOSE
01:02PM 19 THERANOS-WALGREENS PARTNERSHIP MEETINGS, AND THIS IS BACK IN
01:02PM 20 2011. AND SHE'S TALKING TO JAY ROSAN, THE PHYSICIAN THAT WORKS
01:02PM 21 FOR WALGREENS. AND SHE SAYS, "DR. JAY, I JUST DID A TEST ON
01:02PM 22 MYSELF TODAY TO MAKE SURE THE MACHINE IS STILL WORKING." AND
01:02PM 23 THERE'S THE I.D. AND A NUMBER. IT WAS THE ASTHMA TEST.

01:02PM 24 SHE SAYS TO DAN YOUNG, DR. YOUNG -- I AM SORRY.

01:02PM 25 PATTY HAWORTH SAYS TO DR. YOUNG AND DR. ROSAN AND

01:02PM 1 SUNNY BALWANI, "NO FURTHER QUESTIONS, JUST WANTED TO MAKE SURE
01:03PM 2 THE DEVICE WAS WORKING AS EXPECTED."

01:03PM 3 SO YOU'RE DARN RIGHT THAT THEY HAD THE REAGENTS AND
01:03PM 4 CARTRIDGES, OTHERWISE PATTY HAWORTH COULD NOT CONDUCT THE TEST
01:03PM 5 ON HERSELF.

01:03PM 6 SO WALGREENS HAD THE DEVICE, THEY HAD THE ABILITY TO DO
01:03PM 7 THE TESTING, AND THEY DID THE WORK, THEY DID THE JOHNS HOPKINS
01:03PM 8 REVIEW, THEY HAD THE DEVICE FOR TWO YEARS BEFORE THEY LAUNCHED.

01:03PM 9 SO TO SAY THAT THEY WERE -- WALGREENS WAS SOMEHOW
01:03PM 10 DEFRAUDED? NO. LIKE, THEY'RE A BIG COMPANY, AND THEY DID WHAT
01:03PM 11 YOU WOULD EXPECT THEY WOULD DO, EVALUATE IT BEFORE THEY WENT
01:03PM 12 INTO THE BUSINESS WITH THERANOS.

01:03PM 13 THAT'S JUST A MAP SHOWING THAT THEY HAD THIS DEVICE FOR
01:03PM 14 THESE TWO YEARS. WALGREENS IS HEADQUARTERED IN DEERFIELD,
01:03PM 15 ILLINOIS.

01:03PM 16 AND THIS IS MR. JHAVERI ON THE STAND, THE SAME TOPIC.

01:03PM 17 QUESTION: AND THEN IN ADDITION, YOU ALSO SAID AT THE TIME
01:04PM 18 THAT WALGREENS'S CHIEF MEDICAL OFFICER HAD REVIEWED THE
01:04PM 19 TECHNOLOGY AND THE DATA BEFORE IT INTRODUCED THE SERVICE;
01:04PM 20 CORRECT?

01:04PM 21 AND HE SAID CORRECT. THAT WAS A COMMENT THAT HE MADE.

01:04PM 22 OKAY. NOW LET'S GET INTO THE ACTUAL RELATIONSHIP BETWEEN
01:04PM 23 WALGREENS AND THERANOS. SO THE INITIAL CONTRACT WAS IN 2010.
01:04PM 24 THE SIGNER OF THE CONTRACT FROM THE WALGREENS SIDE WAS
01:04PM 25 WADE MIQUELON, WHO YOU HEARD IN THIS CASE WAS LISTED AS

01:04PM 1 EXECUTIVE VICE PRESIDENT. AND MR. JHAVERI ALSO TOLD YOU THAT
01:04PM 2 HE WAS THE CHIEF FINANCIAL OFFICER, A VERY SENIOR MANAGER,
01:04PM 3 CHIEF FINANCIAL OFFICER AT WALGREENS. AGAIN, ANOTHER WITNESS
01:04PM 4 YOU DIDN'T HEAR FROM.

01:04PM 5 SO THE GOVERNMENT HAD MR. JHAVERI TALK ABOUT THIS 2010
01:04PM 6 CONTRACT. MR. JHAVERI WAS NOT INVOLVED IN THE THERANOS PROJECT
01:04PM 7 AT THAT TIME. HE BECAME INVOLVED REALLY IN 2014 TO MOVE THE
01:04PM 8 PARTNERSHIP FORWARD, AND THAT'S WHAT HE TESTIFIED. THIS
01:05PM 9 EARLIER PERIOD, IT WOULD HAVE BEEN WADE MIQUELON WHO WOULD HAVE
01:05PM 10 THAT KNOWLEDGE, AN ANOTHER WITNESS THE GOVERNMENT DIDN'T WANT
01:05PM 11 TO CALL.

01:05PM 12 BUT MR. JHAVERI, AS I SAID, REALLY DIDN'T HAVE ANYTHING TO
01:05PM 13 DO WITH THIS CONTRACT, BUT IT WAS SHOWN TO HIM. AND IT IS THE
01:05PM 14 INITIAL CONTRACT FROM JULY OF 2010, OKAY?

01:05PM 15 ONE IMPORTANT THING ABOUT THIS, IF YOU LOOK AT THIS
01:05PM 16 EXHIBIT, AND THIS IS IMPORTANT AND YOU MIGHT WANT TO WRITE THIS
01:05PM 17 DOWN, EXHIBIT 372, AND IT'S GOING TO BE ON EXHIBIT PAGE 8, AND
01:05PM 18 THERE'S A SECTION 6. AND IN THAT PROVISION IT SAYS THAT RIGHT
01:05PM 19 AT THE MOMENT THAT THERANOS SIGNED THAT CONTRACT WITH WALGREENS
01:05PM 20 IN JULY OF 2010, THERANOS HAD AN IMMEDIATE RIGHT TO
01:05PM 21 \$30 MILLION. WALGREENS OWED THAT MONEY RIGHT AT THAT POINT.
01:05PM 22 THAT'S WHAT THE CONTRACT SAYS. IF YOU LOOK AT THAT SECTION,
01:05PM 23 THAT'S WHAT YOU'LL SEE.

01:05PM 24 AND YOU KNOW WHAT, THERANOS DIDN'T GET THAT MONEY. SO THE
01:05PM 25 GOVERNMENT SAYS THAT THIS WAS SOME KIND OF FRAUD FROM THE VERY

01:06PM 1 BEGINNING WHERE THERANOS PULLED THE WOOL OVER WALGREENS'S EYES.
01:06PM 2 AND WHAT KIND OF FRAUD IS THAT WHERE YOU FINALLY GET THEM TO
01:06PM 3 SIGN A CONTRACT AND THEY OWE YOU \$30 MILLION AND YOU SAY WE
01:06PM 4 DON'T NEED THAT?

01:06PM 5 THIS WAS AN EVOLVING PARTNERSHIP. THEY SIGNED AMENDMENTS
01:06PM 6 TO THE CONTRACT. THEY DID WORK ON THE TECHNOLOGY. THEY
01:06PM 7 LAUNCHED WHEN THERANOS THOUGHT THEY WERE READY TO LAUNCH, AND
01:06PM 8 WALGREENS THOUGHT THAT, TOO. NOT SOME SORT OF RUSH JOB TO GRAB
01:06PM 9 \$30 MILLION FROM WALGREENS THAT THE GOVERNMENT CLAIMS WAS A
01:06PM 10 VICTIM, THIS BIG SOPHISTICATED COMPANY THAT DID ALL OF THIS
01:06PM 11 WORK ON EVALUATING THE TECHNOLOGY AS I'VE JUST DESCRIBED.

01:06PM 12 OKAY. WALGREENS AND THERANOS SIGNED AN AMENDMENT TO THE
01:06PM 13 CONTRACT IN 2012. AND AS YOU MIGHT REMEMBER, MR. JHAVERI SAID
01:06PM 14 THAT THAT CONTRACT, THAT ELIMINATED THE 2010 CONTRACT.

01:06PM 15 SO MR. SCHENK HAD SHOWN YOU SOME PROVISIONS FROM THE 2010
01:07PM 16 CONTRACT WHERE THERE WAS SOME LANGUAGE ABOUT USING THE THERANOS
01:07PM 17 ANALYZER, THERE WAS A DEFINITION OF THE ANALYZER, AND POINTS TO
01:07PM 18 A PROVISION WHERE THEY WERE SUPPOSED TO USE IT.

01:07PM 19 THAT'S GONE. IN 2012 THAT DOESN'T EXIST ANYMORE. THERE'S
01:07PM 20 NO PROVISION THAT SAYS WHAT DEVICE SHOULD BE USED OR THAT A
01:07PM 21 FINGERSTICK HAS TO BE USED. IT'S NOT IN THE CONTRACT.

01:07PM 22 WHAT IS IN THE CONTRACT IS THIS PHASED DISRUPTION MODEL.
01:07PM 23 AND THIS IS CONTRACTUAL LANGUAGE, BUT WHAT IT SAYS IS THAT
01:07PM 24 THERE'S GOING TO BE THIS APPROACH, THERE'S GOING TO BE A
01:07PM 25 COLLECTION OF THE SAMPLE AT WALGREENS.

01:07PM 1 THE INITIAL APPROACH IN 2010 WAS THAT WE'RE GOING TO PUT
01:07PM 2 THE DEVICES IN THE WALGREENS STORES. THAT CHANGED TO THIS WHAT
01:07PM 3 THEY CALL THIS PHASED I APPROACH WHERE THE BLOOD WOULD BE
01:07PM 4 COLLECTED AT WALGREENS, BUT THEN SENT TO THE THERANOS CENTRAL
01:08PM 5 LAB. THIS IS THE PROVISION THAT ACCOMPLISHES THAT.

01:08PM 6 AND THERANOS AND WALGREENS MUTUALLY AGREED TO THAT WAY OF
01:08PM 7 DOING THINGS UNTIL THE FDA APPROVAL COULD BE OBTAINED THAT
01:08PM 8 WOULD ALLOW THE DEVICE TO BE PUT INTO THE WALGREENS STORES.

01:08PM 9 AND THIS IS WHAT MR. JHAVERI SAID ABOUT THAT. QUESTION:
01:08PM 10 AND WALGREENS AND THERANOS AGREED TOGETHER THAT THEY WOULD USE
01:08PM 11 WHAT WAS CALLED A CENTRAL LAB MODEL RATHER THAN HAVING THE
01:08PM 12 DEVICES IN THE STORES THEMSELVES?

01:08PM 13 HE SAID THAT'S CORRECT.

01:08PM 14 WHY USE THE MODIFIED PREDICATES IN THE COMMERCIAL DEVICES?
01:08PM 15 THE NEXT SLIDE.

01:08PM 16 SO DR. ROSENDORFF TESTIFIED A LITTLE BIT ABOUT THIS. SO
01:08PM 17 AS I SAID YESTERDAY, THE THERANOS EDISON DEVICE OR THE 4S,
01:08PM 18 WHICH IS PICTURED HERE, THESE WERE DEVICES THAT WERE DESIGNED
01:08PM 19 FOR A FIELD LOCATION. SO IF YOU HAVE THE DEVICE SITTING IN A
01:08PM 20 PHYSICIAN'S OFFICE, FOR EXAMPLE, PATIENTS WHO COME IN, THEIR
01:09PM 21 TESTS COULD BE DONE. IF YOU'RE AT WALGREENS AND THE DEVICE IS
01:09PM 22 THERE, THE PATIENT COULD GO SHOPPING AT WALGREENS, THEIR TEST
01:09PM 23 COULD BE RUN. MAYBE THE PATIENT HAS TO WAIT A LITTLE BIT.
01:09PM 24 HOPEFULLY NOT TOO LONG.

01:09PM 25 BUT THEY'RE DESIGNED FOR THEIR MORE -- WE'RE DEALING WITH

01:09PM 1 ONE TEST AT A TIME BASICALLY, RIGHT?

01:09PM 2 SO THAT MAKES PERFECT SENSE IF YOU'RE GOING TO HAVE A
01:09PM 3 DEVICE IN A FIELD LOCATION.

01:09PM 4 BUT AS SOON AS YOU'RE USING AN ESSENTIAL LAB MODEL WHERE
01:09PM 5 THE BLOOD IS BEING COLLECTED, IT'S BEING SHIPPED TO ONE
01:09PM 6 LOCATION AT THERANOS, OR ACTUALLY TWO LOCATIONS WHEN THEY OPEN
01:09PM 7 THE ARIZONA LAB, AT THAT POINT YOU NEED SOMETHING WITH HIGHER
01:09PM 8 THROUGHPUT. HIGHER THROUGHPUT JUST MEANS THAT THE MACHINES
01:09PM 9 COULD DO MORE TESTS PER HOUR.

01:09PM 10 SO THAT'S THE ORIGINS OF THE PREDICATE USE AND THE
01:09PM 11 MODIFIED PREDICATE USE, SO THAT IF YOU USE YOUR TECHNOLOGY AND
01:09PM 12 YOUR SCIENTIFIC KNOW-HOW TO MODIFY ONE OF THESE COMMERCIAL
01:10PM 13 MACHINES SO IT COULD RUN FINGERSTICK SAMPLES, THEN YOU CAN DO A
01:10PM 14 LOT OF TESTS PER HOUR. SO THAT WAS A BUSINESS DECISION THAT
01:10PM 15 WAS MADE BASED ON THE MODEL IN THE PHASE I, PHASE II, IN THIS
01:10PM 16 CASE THE PHASED I APPROACH.

01:10PM 17 2012 CONTRACT. JUST TO GO BACK TO THAT.

01:10PM 18 AS I SAID, THERE WAS NO REQUIREMENT TO USE ANY PARTICULAR
01:10PM 19 DEVICE. THERE WAS NO REQUIREMENT TO ACHIEVE ANY PARTICULAR
01:10PM 20 FINGERSTICK PERCENTAGE. AND THEN THERE'S A CLAUSE IN HERE THAT
01:10PM 21 THERE ARE NO OTHER PROMISES OR AGREEMENTS BETWEEN THERANOS AND
01:10PM 22 WALGREENS OTHER THAN WHAT IS STATED IN THE CONTRACT.

01:10PM 23 NEXT SLIDE, PLEASE.

01:10PM 24 THIS IS THE PRESS RELEASE, I THINK YOU'VE SEEN BEFORE,
01:10PM 25 FROM NOVEMBER 13TH, 2013. THERANOS AND WALGREENS MUTUALLY

01:10PM 1 ANNOUNCE THE OPENING OF STORES IN THE PHOENIX METROPOLITAN
01:10PM 2 AREA.

01:10PM 3 AND AS I SAID BEFORE, IT HAS A SECTION ABOUT THE SAMPLES
01:10PM 4 WILL BE CONDUCTED BY EITHER FINGERSTICK OR TRADITIONAL METHODS.
01:11PM 5 SO THAT WAS NOT A SECRET.

01:11PM 6 IT ALSO GOES ON TO SAY IN SEPTEMBER OF 2013, THERANOS AND
01:11PM 7 WALGREENS ANNOUNCED A LONG-TERM PARTNERSHIP TO BRING THERANOS'S
01:11PM 8 NEW LAB TESTING SERVICE NATIONWIDE. SO THAT'S WHAT WALGREENS
01:11PM 9 HAD CONTEMPLATED.

01:11PM 10 AND THEN IF YOU GO TO THE NEXT PAGE, THIS IS A QUOTE FROM
01:11PM 11 A WALGREENS EXECUTIVE, KERMIT CRAWFORD, AS WE WORK TO BRING
01:11PM 12 THERANOS'S LAB TESTING SERVICES TO MORE OF OUR STORES AND
01:11PM 13 COMMUNITIES NATIONWIDE, WE'RE EXCITED, AND SO FORTH.

01:11PM 14 AND THEN IN THE LAST SECTION IT SAYS, AS THE NATION'S
01:11PM 15 LARGEST RETAIL PHARMACY CHAIN WITH MORE THAN 8,000 NEIGHBORHOOD
01:11PM 16 PHARMACIES, INCLUDING 188 IN PHOENIX, WALGREENS HAS THE
01:11PM 17 INFRASTRUCTURE TO ENABLE THERANOS TO BRING ITS SERVICE TO
01:11PM 18 CONSUMERS NATIONWIDE.

01:11PM 19 SO THIS IS WALGREENS SAYING THIS ALONG WITH THERANOS. SO
01:11PM 20 OF COURSE INVESTORS FELT LIKE WE HAVE A MAJOR RETAIL COMPANY
01:11PM 21 WHO IS PARTNERING WITH THERANOS, WHO WE THINK AND THEY WERE
01:12PM 22 RIGHT, CHECK OUT THE TECHNOLOGY AND THERANOS'S SERVICE. AND
01:12PM 23 THEY'RE PARTNERING WITH THERANOS TO -- WITH THE INTENT TO MAKE
01:12PM 24 THIS INTO A NATIONWIDE PROGRAM.

01:12PM 25 IS THERE A RISK IN DOING THAT? YOU BETCHA. TRYING TO GO

01:12PM 1 FROM A FEW STORES, THOUSANDS OF STORES, THAT'S TOUGH. BUT THAT
01:12PM 2 WAS THE PROMISE, THAT WAS THE POTENTIAL, THAT WAS THE DRIVER OF
01:12PM 3 WHY INVESTORS SAW SO MUCH POTENTIAL TO MAKE A LOT OF MONEY IN
01:12PM 4 THERANOS.

01:12PM 5 WALGREENS SAID THIS IN OTHER PLACES, TOO.

01:12PM 6 IF WE GO TO THE NEXT SLIDE.

01:12PM 7 THIS IS A DOCUMENT CALLED A FORM 8-K THAT MS. PETERSON
01:12PM 8 SAID SHE REVIEWED THAT WALGREENS FILED WITH THE SECURITIES AND
01:12PM 9 EXCHANGE COMMISSION.

01:12PM 10 DO YOU SEE ONE OF THE ITEMS IT SAYS TAKING THE NEXT STEP
01:12PM 11 IN THERANOS AND WALGREENS PLANNED NATIONAL ROLLOUT OF
01:12PM 12 THERANOS'S WELLNESS CENTERS BY OPENING TWO NEW CENTERS AT
01:12PM 13 WALGREENS STORES IN THE PHOENIX AREA. AND IT ALSO SAYS THAT
01:12PM 14 THERE'S A STORE IN PALO ALTO.

01:12PM 15 SO THIS IS THEIR REPORTING, WALGREENS, TO THE S.E.C. THIS
01:12PM 16 IS A PLANNED NATIONAL ROLLOUT.

01:13PM 17 SO I'VE TALKED ABOUT THE 2010 CONTRACT THAT WAS INITIALLY
01:13PM 18 THE DEAL BETWEEN THERANOS AND WALGREENS. I'VE TALKED ABOUT THE
01:13PM 19 AMENDMENT IN 2012, BUT I WANT TO SHOW YOU THE LATER AMENDMENT
01:13PM 20 THAT WAS DECEMBER 31ST, 2013.

01:13PM 21 SO THIS IS ANOTHER AMENDMENT TO THE CONTRACT IN THIS
01:13PM 22 EVOLVING PARTNERSHIP BETWEEN THERANOS AND WALGREENS.

01:13PM 23 AND THIS, JUST TO SHOW YOU A FEW PROVISIONS, IT'S THE
01:13PM 24 INTENTION OF THE PARTIES, MEANING WALGREENS AND THERANOS, TO
01:13PM 25 DEVELOP A MUTUALLY BENEFIT INITIAL STRATEGIC RELATIONSHIP THAT

01:13PM 1 FACILITATES THE SUCCESSFUL DEPLOYMENT OF THERANOS NATIONALLY,
01:13PM 2 ESTABLISHES WALGREENS AS A NATIONAL PARTNER FOR LABORATORY
01:13PM 3 SERVICES THAT THERANOS IS ABLE TO PROVIDE AND THERANOS, AS
01:13PM 4 WALGREENS NATIONAL PARTNER, FOR SUCH THERANOS SERVICES.

01:13PM 5 GOING ON.

01:13PM 6 THE PARTIES ARE COMMITTED TO TAKING ALL STEPS REASONABLY
01:13PM 7 NECESSARY TO ENSURE A SUCCESSFUL NATIONAL ROLLOUT OF THERANOS
01:13PM 8 SERVICES. THAT'S WHAT THE AGREEMENT WAS AS OF DECEMBER 31ST OF
01:14PM 9 2013.

01:14PM 10 AND YOU HEARD DISCUSSION ABOUT DISCUSSIONS WITH INVESTORS
01:14PM 11 IN THIS TIME PERIOD IN LATE DECEMBER 2013. WELL, THIS WAS THE
01:14PM 12 DRIVER. MR. BALWANI UNDERSTOOD THAT WALGREENS WAS COMMITTING
01:14PM 13 TO THIS. IT HADN'T HAPPENED YET. THERE'S NO GUARANTEE,
01:14PM 14 THERE'S NO GUARANTEE IN LIFE OR BUSINESS THAT IT COULD END UP
01:14PM 15 NOT WORKING OUT, BUT THIS IS WHAT WALGREENS WAS SAYING. AND
01:14PM 16 MR. BALWANI HAD EVERY REASON TO BELIEVE THIS COULD BE A
01:14PM 17 SMASHING SUCCESS, AND THE INVESTORS THOUGHT SO TOO WHEN THEY
01:14PM 18 INVESTED.

01:14PM 19 AND THEN WALGREENS WAS SO SUBMITTED TO THIS THAT NOT ONLY
01:14PM 20 DID THEY SAY THEY WERE COMMITTED TO A NATIONAL ROLLOUT, THEY
01:14PM 21 ALSO AGREED TO ACCELERATE \$75 MILLION IN WHAT THEY CALLED AN
01:14PM 22 INNOVATION FEE. SO WALGREENS WAS NOW FORWARDING TO THERANOS
01:14PM 23 \$75 MILLION.

01:14PM 24 YOU HEARD FROM THE GOVERNMENT THAT IN THAT PERIOD STARTING
01:15PM 25 IN SEPTEMBER OF 2013 THAT THERANOS WAS OUT OF CASH AND NEEDED

01:15PM 1 TO RAISE INVESTMENT MONEY BECAUSE IT WAS DOWN TO, YOU KNOW, I
01:15PM 2 THINK THEY SAID \$14 MILLION, INCLUDING A LETTER OF CREDIT.

01:15PM 3 WELL, THIS NEGOTIATION THAT LED TO WALGREENS ADVANCING
01:15PM 4 \$75 MILLION, THIS DIDN'T HAPPEN ON DECEMBER 31ST. I MEAN,
01:15PM 5 LET'S USE OUR COMMON SENSE HERE, RIGHT? THIS IS GOING TO BE A
01:15PM 6 NEGOTIATION. SO THERANOS IS GETTING THIS MONEY, RIGHT?

01:15PM 7 AND EVEN THOUGH MS. SPIVEY, THE ACCOUNTANT, WOULD SAY,
01:15PM 8 WELL, THIS IS DEFERRED REVENUE, THERANOS HAS THE CASH. THE
01:15PM 9 PURPOSE OF THIS CASH WAS TO MOVE THE NATIONAL ROLLOUT FORWARD,
01:15PM 10 THAT'S WHY WALGREENS WAS DOING THIS.

01:15PM 11 AND SO WALGREENS BELIEVED IN THIS SO MUCH THAT THEY NOT
01:15PM 12 ONLY SAID THEY WOULD, THEY GAVE THERANOS \$75 MILLION TO
01:15PM 13 ACCOMPLISH THAT AFTER DOING THEIR DUE DILIGENCE, HAVING THE
01:15PM 14 DEVICE WITH JOHNS HOPKINS, AND SO FORTH.

01:15PM 15 OKAY. LET'S GET INTO SOME OF THE MEETINGS BETWEEN
01:16PM 16 WALGREENS AND THERANOS.

01:16PM 17 SO AS YOU SAW THROUGH MR. JHAVERI, THERE WERE THESE
01:16PM 18 PERIODIC MEETINGS, AND THIS IS THE ONE FROM MAY 2014.

01:16PM 19 SO AT THIS POINT IN TIME, HERE'S SOME OF THE HIGHLIGHTS.
01:16PM 20 MR. BALWANI OPENED THE MEETING, HOW TO MAKE SURE THE NEXT
01:16PM 21 10,000 PATIENTS HAVE A PERFECT CUSTOMER EXPERIENCE? CUSTOMER
01:16PM 22 EXPERIENCE WAS IMPORTANT.

01:16PM 23 NIMESH, IT WAS MR. JHAVERI, REMINDED US OF HOW FAR WE HAVE
01:16PM 24 COME SINCE JANUARY. WE WERE AT 21 STORES NOW.

01:16PM 25 AND THEN IF YOU GO ON, IT SAYS A PILOT SHOULD NOT BE

01:16PM 1 PERFECT. IT SHOULD BE SO WE CAN LEARN EVERYTHING WE NEED TO
01:16PM 2 SCALE. SCALE MEANS OPENING MORE AND MORE STORES, RAMPING UP.

01:16PM 3 THE LAST PART THERE ON THE BOTTOM, GREG WASSON, HE WAS THE
01:16PM 4 CHIEF EXECUTIVE OFFICER AT THE TIME AT WALGREENS. HE WAS
01:16PM 5 SUPPORTIVE. SO THE HIGHEST LEVEL AT WALGREENS. TEAMS NEED TO
01:17PM 6 BECOME TIGHTER. IF WE THINK 20 STORES ARE TOUGH, WAIT UNTIL WE
01:17PM 7 GET TO 2500 STORES. AND THEN IT GOES ON.

01:17PM 8 SO THIS IS WHAT THEY'RE TALKING ABOUT IN MAY OF 2014
01:17PM 9 BETWEEN THERANOS AND WALGREENS.

01:17PM 10 NEXT. THAT SAME MEETING. PER NIMESH, 40, MEANING 40
01:17PM 11 STORES, IS IN THE BAG. WE NEED TO THINK ABOUT SCALE. SO
01:17PM 12 THAT'S WHAT WALGREENS IS SAYING, LET'S THINK ABOUT SCALE, LET'S
01:17PM 13 THINK ABOUT RAMPING UP.

01:17PM 14 PER NIMESH, THE TIMING IS RIGHT, BECAUSE THIS IS WHEN WE
01:17PM 15 ARE SELECTING THE WELL EXPERIENCE STORES IN 2015, 2016, AND
01:17PM 16 2017.

01:17PM 17 YOU MIGHT REMEMBER FROM MR. JHAVERI THAT WALGREENS HAD
01:17PM 18 THIS PROGRAM CALLED WELL EXPERIENCE, A TOTALLY SEPARATE PROGRAM
01:17PM 19 FROM THERANOS, WHERE THEY WERE BUILDING OUT STORES IN A CERTAIN
01:17PM 20 WAY TO HAVE A COMMUNITY ROOM. AND IT DAWNED ON EVERYONE HERE
01:17PM 21 THAT YOU COULD USE THESE STORES FOR BLOOD TESTING HERE AS WELL.
01:17PM 22 THAT'S WHAT MR. JHAVERI SAID, AND THAT'S WHAT THE WELL
01:17PM 23 EXPERIENCE REFERS TO.

01:17PM 24 AND THEN IF YOU GO TO THE NEXT PAGE, THIS IS STILL IN THE
01:18PM 25 MAY 2014 MEETING, THE GOAL AT THAT TIME AS OF MAY 2014, IT WAS

01:18PM 1 500 STORES IN FISCAL YEAR 2015. FISCAL YEAR 2015 MEANS THROUGH
01:18PM 2 THE END OF AUGUST OF '15. SO IT WAS NOT THE WHOLE YEAR '15.
01:18PM 3 IT WAS THE FISCAL YEAR. WE'LL SEE THE NOTATION ON THAT LATER.

01:18PM 4 SO FOR THAT PERIOD OF TIME THROUGH THE END OF AUGUST 2015,
01:18PM 5 THE GOAL WAS 500 STORES. THAT'S WHAT THEY WERE TALKING ABOUT
01:18PM 6 IN MAY OF '14. SO IT'S IMPORTANT TO KEEP THAT IN MIND AS WE
01:18PM 7 TALK ABOUT WHAT HAPPENS IN THE NEXT COUPLE OF MONTHS.

01:18PM 8 SO NOW LET'S FAST FORWARD TO JULY, JULY 2014. THIS IS THE
01:18PM 9 MEETING FROM THAT TIME PERIOD. THERANOS HIT THEIR FIRST
01:18PM 10 100-PLUS PATIENTS PER DAY ON JULY 2ND. SO THINGS ARE MOVING IN
01:18PM 11 THE RIGHT DIRECTION ON THAT FRONT.

01:18PM 12 AND AT THIS POINT THEY'RE ON TRACK TO LAUNCH 40 STORES BY
01:19PM 13 AUGUST 31ST. THEY HAD NOT GOT TO THE 40 STORES YET AT THIS
01:19PM 14 POINT, BUT THAT WAS THE GOAL BY THE END OF AUGUST 2014.

01:19PM 15 NEXT SLIDE.

01:19PM 16 SUNNY ECHOED NIM JHAVERI'S COMMENTS, TEAM HAS GROWN FROM
01:19PM 17 10 TO 100, MOMENTUM IS BEGINNING. SO THAT'S WHAT MR. JHAVERI
01:19PM 18 AND MR. BALWANI THOUGHT.

01:19PM 19 WE ARE BUILDING OUT PRIVATE HEALTH ROOMS CHAINWIDE AND
01:19PM 20 WORKING WITH LEGAL TO GET THE GREEN LIGHT TO USE HCC ROOMS.

01:19PM 21 MR. JHAVERI TESTIFIED THAT THERE WERE ROOMS AT WALGREENS
01:19PM 22 CALLED THE HEALTH CARE CLINICS, AND IT ALSO DAWNED ON EVERYONE
01:19PM 23 THAT THEY COULD USE THOSE FOR BLOOD TESTING AS WELL. THERE WAS
01:19PM 24 A CERTAIN NUMBER OF THESE HCC STORES THAT WALGREENS HAD THAT
01:19PM 25 THEY WERE GOING TO BUILD OUT, AND WE'RE GOING TO SEE THAT WHEN

01:19PM 1 WE GET TO AUGUST. AT THIS POINT THEY'RE WORKING ON GETTING A
01:19PM 2 GREEN LIGHT TO USE THE HCC ROOMS FOR THERANOS BLOOD TESTING.

01:19PM 3 AND THEN THOSE WERE GOING TO BE FOR A PARTICULAR TYPE OF
01:19PM 4 TEST, THESE STD -- I THINK IT'S CALLED STI PANELS. AND THOSE
01:20PM 5 WERE THE CONDITIONS: HIV, SYPHILIS, GONORRHEA. AND THE PRICE
01:20PM 6 WAS CONTEMPLATED TO BE \$59. IT'S IMPORTANT TO NOTE THAT THAT
01:20PM 7 \$59 FOR THAT PANEL WAS MORE LUCRATIVE THAN THE NORMAL \$35 THAT
01:20PM 8 PATIENTS WERE GOING TO PAY. SO THIS WAS ACTUALLY, EVEN THOUGH
01:20PM 9 LESS TESTING, IT WOULD HAVE BEEN MORE LUCRATIVE TO THERANOS,
01:20PM 10 THESE HCC TESTS.

01:20PM 11 AND, IN FACT, MR. JHAVERI TESTIFIED THAT WALGREENS WAS
01:20PM 12 GOING TO GET \$10 OF THAT UNDER THE DEAL THAT EXISTED, WHETHER
01:20PM 13 IT WAS \$35 THAT THE PATIENT PAID OR \$59, WALGREENS WAS GOING TO
01:20PM 14 GET 10 AND THERANOS WOULD GET THE REST.

01:20PM 15 SO LET'S GO ON.

01:20PM 16 THIS IS IN JULY. SO AT THIS POINT THERE'S A SECTION OF
01:20PM 17 THESE MINUTES. AND JUST TO BE CLEAR, MR. JHAVERI TESTIFIED
01:20PM 18 THAT PATTY HAWORTH, THE WALGREENS EMPLOYEE, DUTIFULLY TOOK
01:20PM 19 THESE MINUTES AND TRIED TO GET EVERYTHING RIGHT SO THAT IT
01:21PM 20 ACCURATELY REFLECTS WHAT HAPPENED AT THESE MEETINGS.

01:21PM 21 IN 2014 AND '15, THIS SECTION TALKS ABOUT THE CONTEMPLATED
01:21PM 22 MARKET EXPANSION FOR THAT PERIOD. AND THE ONLY AREAS THAT
01:21PM 23 THEY'RE TALKING ABOUT IN JULY ARE ARIZONA, WHERE THERE WERE
01:21PM 24 SOME STORES ALREADY; CALIFORNIA, IS WHERE THERE WAS AT THAT
01:21PM 25 POINT ONE STORE; AND THE TRI-STATE AREA, WHICH IS THE NEW

01:21PM 1 JERSEY, NEW YORK, CONNECTICUT AREA BACK EAST. SO THAT WAS THE
01:21PM 2 MARKET, THOSE THREE, THAT THEY WERE TALKING ABOUT IN JULY.
01:21PM 3 IT'S GOOD TO KEEP THAT IN MIND WHEN WE GET TO AUGUST,
01:21PM 4 BECAUSE THINGS CHANGE A LOT.
01:21PM 5 BUT BEFORE WE GET THERE, LET'S TALK ABOUT MR. JHAVERI'S
01:21PM 6 EMAIL AT THE END OF JULY.
01:21PM 7 GO TO THE NEXT SLIDE. THANK YOU.
01:22PM 8 THIS IS EXHIBIT 20228. THIS IS THE END OF JULY. THIS IS
01:22PM 9 CASEY KOZLOWSKI, ANOTHER WALGREENS EMPLOYEE. HE WRITES, "HI
01:22PM 10 SUNNY,
01:22PM 11 "THANKS FOR THE NOTE -- THIS IS ALL GREAT NEWS. I
01:22PM 12 ACTUALLY HAD A CALL REGARDING HCC STD TESTING TODAY -- MORE TO
01:22PM 13 COME ON THAT, BUT THINGS ARE MOVING FORWARD."
01:22PM 14 SO THAT PROGRAM IS ADVANCING.
01:22PM 15 MR. BALWANI WRITES BACK, "WE BROKE THRU 20 CUSTOMERS PER
01:22PM 16 DAY THRESHOLD IN OUR PALO ALTO STORE. 22 PATIENTS TODAY.
01:22PM 17 2 COUPONS, 20 PAID CUSTOMERS.
01:22PM 18 "SO PATIENT TRAFFIC IS INCREASING, GOING TO THE RIGHT
01:22PM 19 DIRECTION."
01:22PM 20 AND THEN MR. JHAVERI SAYS, "THANK YOU, SUNNY. THIS IS
01:22PM 21 TERRIFIC. WE ARE STARTING TO MOVE MOUNTAINS."
01:22PM 22 DOES THAT SOUND LIKE A PARTNERSHIP THAT IS WINDING DOWN AT
01:22PM 23 THIS POINT? I DON'T THINK SO.
01:22PM 24 BUT LET'S GO TO THIS VERY KEY MEETING IN AUGUST 2014,
01:23PM 25 AUGUST 6TH, 2014, THE NEXT EXHIBIT. THIS IS THE PARTNERSHIP

01:23PM 1 MEETING MINUTES FROM THAT AUGUST 6TH, 2014 MEETING.

01:23PM 2 AND JUST TO GO THROUGH SOME OF THE MATERIAL HERE. THIS IS
01:23PM 3 THE THERANOS EXPERIENCE SURVEY SUMMARY. THIS WAS VERY
01:23PM 4 IMPORTANT TO WALGREENS AND TO THERANOS. AND YOU CAN SEE THAT
01:23PM 5 THE AVERAGE QUALITY EXPERIENCE ARE ALL VERY HIGH. THIS IS OUT
01:23PM 6 OF 5. SO 4.85. THE LOWEST ONE IS 4.61 ON THE CHECK-IN
01:23PM 7 PROCESS. THE SAMPLE COLLECTION PROCESS IS 4.86.

01:23PM 8 AND REMEMBER, PEOPLE WERE GETTING BOTH VENOUS DRAWS AND
01:23PM 9 FINGERSTICK, RIGHT? ABOUT 40 PERCENT VENOUS DRAWS AND ABOUT
01:23PM 10 60 PERCENT FINGERSTICK, BUT PEOPLE WERE PLEASED WITH THE SAMPLE
01:23PM 11 COLLECTION PROCESS.

01:23PM 12 AND THESE WERE VERY IMPORTANT METRICS FOR WALGREENS.
01:23PM 13 WHERE DO YOU TYPICALLY GET YOUR PRESCRIPTIONS FILLED CUSTOMERS
01:23PM 14 ARE ASKED?

01:23PM 15 53 PERCENT SAY WALGREENS. BUT ALL OF THE REST WERE OTHER
01:24PM 16 COMPETITORS OF WALGREENS. SO THIS IS BRINGING PEOPLE INTO THE
01:24PM 17 WALGREENS STORE THAT WOULDN'T NECESSARILY BE THERE OTHERWISE.
01:24PM 18 SO THAT'S USEFUL TO WALGREENS, RIGHT? THEY WANT MORE
01:24PM 19 CUSTOMERS, TOO.

01:24PM 20 BASED ON YOUR RECENT VISIT, WHAT IS THE LIKELIHOOD THAT
01:24PM 21 YOU WILL RETURN TO A THERANOS WELLNESS CENTER?

01:24PM 22 AND YOU CAN SEE THAT OVERWHELMINGLY 82 PERCENT SAY THEY
01:24PM 23 WILL DEFINITELY COME BACK, 17 PERCENT IN THE BLUE THERE ARE
01:24PM 24 LIKELY TO RETURN, AND JUST 1 PERCENT SAYS NOT SURE IF I WILL
01:24PM 25 RETURN. SO THAT IS PRETTY GOOD RESULTS.

01:24PM 1 THIS IS BEING DISCUSSED AT THE PARTNERSHIP MEETING IN
01:24PM 2 AUGUST, AND IN ALL OF THE MEETINGS REALLY THERE ARE SIMILAR
01:24PM 3 GRAPHS, BECAUSE THEY WANT TO TRACK HOW THIS CUSTOMER EXPERIENCE
01:24PM 4 AND HOW THIS IS WORKING OUT, AND THAT'S PART OF WHAT THEY'RE
01:24PM 5 DISCUSSING.

01:24PM 6 IT'S NOT JUST ABOUT FINGERSTICK. WE'LL TALK ABOUT THAT.

01:24PM 7 THE GOVERNMENT REALLY WANTS YOU TO THINK THAT, WELL, THE
01:24PM 8 FINGERSTICK PERCENTAGE IS REALLY HOVERING AROUND 40 PERCENT, SO
01:24PM 9 WITHOUT MORE MOVEMENT THERE, THE WHOLE PARTNERSHIP IS DEAD
01:25PM 10 BASICALLY.

01:25PM 11 THAT'S NOT THE CASE. THAT IS ONE FACTOR, THE FINGERSTICK
01:25PM 12 PERCENTAGE, AND I'M GOING TO ADDRESS THAT, AND THERE ARE OTHER
01:25PM 13 FACTORS THAT WERE VERY IMPORTANT TO WALGREENS AND VERY
01:25PM 14 IMPORTANT TO THERANOS THAT THE GOVERNMENT HAS IGNORED. THESE
01:25PM 15 ARE SOME OF THEM THAT WE'RE DISCUSSING NOW.

01:25PM 16 LET'S GO TO THE NEXT SLIDE. LIKELY TO COME BACK BY
01:25PM 17 8/31/15.

01:25PM 18 THE SUCCESSFUL CRITERIA STATED WAS EQUAL TO OR GREATER
01:25PM 19 THAN 90 PERCENT. THEY WERE ALREADY THERE.

01:25PM 20 LET'S GO TO THE PARTNERSHIP MEETING MINUTES THEMSELVES.
01:25PM 21 THE KICKOFF: MOMENTUM IS BUILDING, PATIENT UPTICK IS
01:25PM 22 OCCURRING; THEY ARE MEETING QUITE FREQUENTLY; MR. JHAVERI
01:25PM 23 COMMENTED ON A BIG DAY FOR WALGREENS TO FOCUS US EVEN HARDER
01:25PM 24 FOR WHAT IS NEXT TO FOCUS ON INITIATIVES TO DRIVE VALUE TO
01:26PM 25 WALGREENS, OUR PARTNERS, AND U.S. HEALTH SYSTEM.

01:26PM 1 SO IT'S A BIG MEETING FOR WALGREENS.

01:26PM 2 KEEP GOING.

01:26PM 3 AS I JUST SHOWED YOU IN THE CHARTS, THERANOS EXPERIENCE
01:26PM 4 SURVEY SUMMARY RESULTS ARE OFF THE CHARTS. THAT'S WHAT WAS
01:26PM 5 BEING REPORTED AT THIS MEETING.

01:26PM 6 OKAY. NOW, THIS IS THE PLAN FOR FISCAL YEAR '15. THAT'S
01:26PM 7 THAT PERIOD GOING THROUGH AUGUST 31ST, 2015.

01:26PM 8 AND REMEMBER IN THE JULY MEETING MINUTES, SO JUST THE
01:26PM 9 MONTH BEFORE, THE GOAL WAS 500. BUT THAT WAS IN MAY RATHER.
01:26PM 10 SO THE GOAL WAS 500 STORES FOR THAT FISCAL YEAR, AND NOW
01:26PM 11 THEY'RE TALKING ABOUT SOMETHING DIFFERENT.

01:26PM 12 AND REMEMBER THE GOAL FOR THAT PERIOD WAS TO HAVE ONLY
01:26PM 13 THREE ADDITIONAL MARKETS. ARIZONA WAS AN EXISTING MARKET, BUT
01:26PM 14 THEY COULD EXPAND THAT; CALIFORNIA TO EXPAND BEYOND THE ONE
01:27PM 15 STORE; AND TRI-STATE AREA, AND THAT WAS THE THREE MARKETS THAT
01:27PM 16 THEY WERE TALKING ABOUT IN MAY OF 2014, AND IT WAS GOING TO BE
01:27PM 17 500 STORES FOR THIS FISCAL YEAR.

01:27PM 18 NOW LET'S LOOK AT WHAT IS GOING ON IN AUGUST.

01:27PM 19 SO THEY SAY THE NEXT MARKET IS NORTHERN CALIFORNIA. AND
01:27PM 20 THE NEXT MARKETS ARE -- AND NOW THEY'RE ADDING MORE MARKETS.
01:27PM 21 SO THE PRIORITY ONE MARKETS ARE CALIFORNIA, WHICH THEY TALKED
01:27PM 22 ABOUT BEFORE, BUT IT'S STILL THERE, AND THAT'S APPROXIMATELY
01:27PM 23 90 STORES; ARIZONA, APPROXIMATELY 20 STORES. REMEMBER, THEY
01:27PM 24 ALREADY HAD AT THIS POINT ALMOST 40 STORES, SO THEY'RE GOING TO
01:27PM 25 EXPAND TO AN ADDITIONAL 20, NEW YORK, NEW JERSEY TO

01:27PM 1 CONNECTICUT, THAT IS THE TRI-STATE AREA, THAT WAS GOING TO BE
01:27PM 2 ABOUT 90 STORES.

01:27PM 3 SO WYOMING IS A QUESTION MARK. BUT RIGHT THERE, 90, PLUS
01:27PM 4 20, PLUS 90, THAT'S 200 STORES RIGHT THERE BEFORE YOU EVEN GET
01:27PM 5 TO THE REST OF THE MARKET THAT THEY WERE TALKING ABOUT.

01:27PM 6 SO LET'S GO ON TO THE REST OF THEM. THESE ARE ADDITIONAL
01:28PM 7 MARKETS THAT ARE IN DISCUSSION BETWEEN THERANOS AND WALGREENS
01:28PM 8 THAT HAD NOT BEEN IN THE MAY MEETING.

01:28PM 9 SO NOW WE HAVE THE PRIORITY 2 MARKETS: ILLINOIS, TEXAS,
01:28PM 10 AND FLORIDA. THREE VERY LARGE STATEMENTS.

01:28PM 11 PRIORITY 3 MARKETS: INDIANA, NEW MEXICO, MISSOURI, AND
01:28PM 12 EXCLUDED PENNSYLVANIA.

01:28PM 13 SO DOES THIS LOOK LIKE SOMETHING THAT IS CONTRACTING OR
01:28PM 14 EXPANDING? THEY'RE ADDING MORE MARKETS. I'M SORRY.

01:28PM 15 THEY WERE AT -- WHEN THEY WERE AT A PROJECTION OF 500
01:28PM 16 STORES, THEY WERE TALKING ABOUT 3 MARKETS, AND NOW THEY HAVE
01:28PM 17 200 STORES WITH JUST THOSE 3 MARKETS, AND NOW THEY'RE ADDING
01:28PM 18 MORE MARKETS.

01:28PM 19 AND WHEN YOU LOOK AT THIS, THEY'RE GOING -- THE GOVERNMENT
01:28PM 20 CLAIMS THAT THIS WAS A SCALING BACK FROM 500 TO 200, BUT WE'VE
01:28PM 21 GOT 200 JUST WITH THE THREE, ARIZONA, CALIFORNIA, AND THE
01:29PM 22 TRI-STATE, AND NOW THEY'RE ADDING MORE MARKETS, ILLINOIS,
01:29PM 23 TEXAS, FLORIDA. IT'S GOING TO BE MORE THAN 200. AND YOU CAN
01:29PM 24 SEE THAT IN THE REST OF THE DOCUMENT.

01:29PM 25 PLAN FOR FISCAL YEAR '15 IS TO FOLLOW THE WELL EXPERIENCE

01:29PM 1 ROLLOUT AS MUCH AS POSSIBLE. MR. JHAVERI TESTIFIED TO THAT,
01:29PM 2 THEY WERE BUILDING THIS WELL EXPERIENCE ANYWAY, AND IT TURNED
01:29PM 3 OUT THEY HAD A ROOM THAT COULD BE USED FOR BLOOD TESTING, SO
01:29PM 4 THEY COULD DO THERANOS BLOOD TESTING IN ALL OF THE STORES THAT
01:29PM 5 WERE WELL EXPERIENCE STORES.

01:29PM 6 AND THIS IS, THIS NEXT BULLET. INITIAL GOAL FOR FISCAL
01:29PM 7 YEAR '15, SEPTEMBER THROUGH AUGUST, THAT'S THE FISCAL YEAR.
01:29PM 8 THE INITIAL GOAL WAS 500 SORES. SO WE'VE SEEN THAT BEFORE.
01:29PM 9 NEED TO DEFINE THIS GOAL.

01:29PM 10 SO WHAT DOES IT SAY RIGHT AFTER THAT? DOES IT SAY WE NEED
01:29PM 11 TO REDEFINE THIS GOAL DOWNWARD TO 200 STORES? NO.

01:29PM 12 IT SAYS THE NEXT THING WE NEED TO DO AFTER REDEFINING THIS
01:29PM 13 GOAL, IT SAYS NATIONWIDE 2,000 TO 2500 STORES AND 25 TO 30
01:30PM 14 METROPOLITAN STATISTICAL AREAS. IT ASSUMES A LAUNCH IN
01:30PM 15 PARALLEL MARKETS. THAT MEANS NOT JUST FOCUSING ON ONE MARKET
01:30PM 16 AT A TIME, LAUNCHING IN SEVERAL MARKETS AT ONCE, PARALLEL
01:30PM 17 MARKETS.

01:30PM 18 NEED TO FIGURE OUT LAUNCH IN A BOX CONCEPT. MR. JHAVERI
01:30PM 19 TESTIFIED THAT IF YOU'RE GOING TO EXPAND RAPIDLY, YOU'VE GOT TO
01:30PM 20 HAVE A SYSTEM WHERE -- HOW YOU'RE GOING TO ROLL OUT ANY NEW
01:30PM 21 STORES IS PRETTY MUCH PACKAGED IN A BOX SO YOU COULD NOT
01:30PM 22 REINVENT THE WHEEL EVERY TIME AND JUST FORWARD WITH WHATEVER
01:30PM 23 YOU HAVE PLANNED THAT YOU'VE DONE OVER AND OVER AGAIN, THAT'S
01:30PM 24 PLAN TO LAUNCH IN A BOX.

01:30PM 25 PLAN TO BE IN EVERY HCC LOCATION. EVERY HCC LOCATION.

01:30PM 1 AND MR. JHAVERI CONFIRMED THAT IN HIS TESTIMONY.

01:30PM 2 AND BY THE WAY, THAT'S 430 EXISTING STORES, PLUS 50 NEW IN
01:30PM 3 FISCAL YEAR 2015.

01:30PM 4 SO RIGHT THERE WE'VE GOT 480, RIGHT? PLUS WE HAVE THE 200
01:30PM 5 FOR CALIFORNIA, ARIZONA, AND THE TRI-STATE, PLUS THE EXISTING
01:31PM 6 40 STORES, AND OTHER STORES.

01:31PM 7 SO WE'RE VERY QUICKLY COMING TO THE 900 STORE NUMBER, AND
01:31PM 8 I'M GOING TO SHOW YOU EVEN MORE THAN THAT, THAT THE GOVERNMENT
01:31PM 9 CLAIMS THAT WHEN LISA PETERSON WAS TOLD, YEAH, WE'RE HOPING
01:31PM 10 THEY ROLL OUT TO 900 STORES IN 2015, THE GOVERNMENT CLAIMS THAT
01:31PM 11 THAT IS SOME KIND OF MISREPRESENTATION TO MS. PETERSON.

01:31PM 12 WELL, THIS IS WHAT MR. BALWANI WAS LEARNING VERY SHORTLY
01:31PM 13 BEFORE HE WAS DEALING WITH THE DEVOS FAMILY AND MR. MOSLEY
01:31PM 14 ABOUT WHAT WALGREENS WAS THINKING.

01:31PM 15 AND WHATEVER MR. JHAVERI SAYS ON THE STAND NOW DURING THIS
01:31PM 16 TRIAL, THIS IS WHAT IS IN THE DOCUMENT. AND WHATEVER HE SAYS
01:31PM 17 ON THE STAND, THIS IS WHAT MR. BALWANI WAS LEARNING IN REAL
01:31PM 18 TIME SEEING IT THROUGH HIS EYES WHEN HE WAS DEALING WITH
01:31PM 19 WALGREENS.

01:31PM 20 AGAIN, IT DOESN'T SAY WE'RE SCALING BACK. IT SAYS
01:31PM 21 REDEFINE THIS GOAL. NATIONWIDE, 2,000 TO 2500 STORES, AND THE
01:32PM 22 THEN REST OF THE MATERIAL THAT I JUST READ TO YOU.

01:32PM 23 NOW, LET'S GO DOWN THE PAGE A BIT BECAUSE THERE'S MORE TO
01:32PM 24 THIS.

01:32PM 25 SO YOU CAN SEE FROM THE CHART THAT THE WELL EXPERIENCE IS

01:32PM 1 2,000 AND THEN THERANOS IS 200. SO WHAT MR. JHAVERI WANTS TO
01:32PM 2 SAY NOW -- REMEMBER, EVERYBODY AT THIS POINT DOES NOT WANT TO
01:32PM 3 SAY I WAS A CHEERLEADER FOR THERANOS, I LOVED THERANOS IN
01:32PM 4 AUGUST OF 2014.

01:32PM 5 AT THIS POINT EVERYONE'S INCENTIVE IS TO SAY, NO, I WAS
01:32PM 6 BACKING OFF, YOU KNOW, I DIDN'T WANT TO HAVE ANYTHING TO DO
01:32PM 7 WITH IT.

01:32PM 8 SO HE'S NOW TRYING TO CLAIM THAT 200 STORES AND THERANOS
01:32PM 9 STORES, THAT'S IT, THAT ONE BOX IS IT. IGNORING THE 430, PLUS
01:32PM 10 50 FOR HCC AND IGNORING THE WELLNESS EXPERIENCE OF 2,000.

01:32PM 11 AND THINK ABOUT THIS FOR A MINUTE. WHY WOULD THE
01:32PM 12 PARTNERSHIP BETWEEN THERANOS AND WALGREENS, WHY WOULD
01:32PM 13 MR. JHAVERI AND WALGREENS BE PUTTING IN A CHART 2,000 WELL
01:32PM 14 EXPERIENCE STORES IF THAT HAD NOTHING TO DO WITH THERANOS?
01:33PM 15 THAT'S JUST SOME INDEPENDENT PROGRAM. SO OBVIOUSLY SOME
01:33PM 16 PORTION OF THE 2,000 WELL EXPERIENCE STORES HAVE EVERYTHING TO
01:33PM 17 DO WITH THERANOS, AND IT CONFIRMS THAT IN THE REST OF THE
01:33PM 18 DOCUMENT THAT WE'RE GOING TO DISCUSS IN A MINUTE.

01:33PM 19 SO THE NEXT STEPS. GET LIST OF 2,000 STORES WITH PRIVATE
01:33PM 20 HEALTH ROOMS; GET LIST OF WELLNESS EXPERIENCE STORES WITHIN
01:33PM 21 THOSE STATES. SO THAT'S THE LEGWORK THAT HAS TO BE DONE.

01:33PM 22 AND THEN THIS BULLET POINT REALLY NAILS IT. THE ONE THAT
01:33PM 23 IS HIGHLIGHTED THERE, THERANOS, WELL EXPERIENCE, HSRX, AND
01:33PM 24 CLINICS ARE TOP PRIORITIES FOR THE COMPANY; 3 OUT OF 4 ARE
01:33PM 25 REPRESENTED ON THE THERANOS INITIATIVE.

01:33PM 1 SO MR. JHAVERI EXPLAINED THAT HSRX IS A TOTALLY SEPARATE
01:33PM 2 PROGRAM. THERE'S NO DISPUTE THAT IT HAS NOTHING TO DO WITH
01:33PM 3 THERANOS. SO THE 3 OUT OF THE 4 THAT ARE REPRESENTED ON THE
01:33PM 4 THERANOS INITIATIVE ARE THERANOS, WELL EXPERIENCE, AND CLINICS.

01:33PM 5 THERANOS, THAT LABEL, THAT APPLIES TO THE THERANOS GOLD
01:34PM 6 STORES. AND GO BACK TO THE DECEMBER 31ST CONTRACT AMENDMENT,
01:34PM 7 IT DEFINES WHAT GOLD STORES ARE.

01:34PM 8 SO THERE WAS A CERTAIN AMOUNT OF STORES THAT THERANOS HAD
01:34PM 9 AT WALGREENS OR THESE COLLECTION CENTERS THAT WOULD BE
01:34PM 10 SEPARATELY BUILT OUT WITH THE THERANOS SIGN AND HAD A SEPARATE
01:34PM 11 BATHROOM AND A SEPARATE ROOM. THOSE WERE THE SO-CALLED GOLD
01:34PM 12 STORES, THAT LEVEL OF SERVICE.

01:34PM 13 AND SO THE THERANOS STORES REFERS TO THE THERANOS STORES,
01:34PM 14 AND THEN THE BLOOD TESTING COULD ALSO GO ON AT THESE WELL
01:34PM 15 EXPERIENCE STORES AND THESE HCC CLINIC STORES. AND THAT'S WHAT
01:34PM 16 THAT BULLET IS SAYING, THERANOS, WELL EXPERIENCE, AND CLINICS,
01:34PM 17 THOSE ARE THE THREE REPRESENTED ON THE THERANOS INITIATIVE.

01:34PM 18 BUT LET'S TALK ABOUT MR. JHAVERI A LITTLE BIT MORE.

01:34PM 19 GO TO THE NEXT SLIDE.

01:34PM 20 AND THAT'S JUST CONFIRMING THAT MS. HAWORTH TOOK ACCURATE
01:34PM 21 NOTES AND MADE SURE SHE CAPTURED ALL OF THE DECISIONS THAT WERE
01:35PM 22 BEING MADE AT THESE MEETINGS.

01:35PM 23 SO JUST ABOUT A WEEK AFTER THE PARTNERSHIP MEETING
01:35PM 24 MINUTES, MR. JHAVERI SENT THIS EMAIL TO MR. BALWANI, AND JUST
01:35PM 25 TO SHOW WHAT MR. BALWANI WAS ASKING. HE WROTE TO MR. JHAVERI

01:35PM 1 ON AUGUST 12TH. HE SAID, CAN WE TOUCH BASE OVER THE NEXT FEW
01:35PM 2 DAYS TO CHAT ABOUT OUR GOLD, SILVER, AND BRONZE STORE LAYOUTS
01:35PM 3 AND DISTRIBUTION. AS YOU MAY KNOW (MAY NOT KNOW ALSO) THAT IN
01:35PM 4 ARIZONA AND CALIFORNIA, AT LEAST 40 PERCENT OF THE STORES ARE
01:35PM 5 TO BE GOLD (DEDICATED THERANOS ROOMS) SO WE WANT TO MAKE SURE
01:35PM 6 WE ARE TRACKING THAT.

01:35PM 7 SO MR. BALWANI IS JUST POINTING OUT, HEY, WHILE WE ARE
01:35PM 8 EXPANDING, KEEP IN MIND WE HAVE A CONTRACT THAT SAYS 40 PERCENT
01:35PM 9 OF THESE HAVE TO BE GOLD ROOM STORES, A SEPARATE BATH ROOM AND
01:35PM 10 SEPARATE ROOM AND SO FORTH.

01:35PM 11 AND MR. JHAVERI RESPONDS. HE SAYS, "HI SUNNY, YES, FULLY
01:35PM 12 AWARE OF THE TERMS -- WE ARE DETERMINING THE IMPLICATIONS OF
01:35PM 13 THIS REQUIREMENT. THE BEST WAY TO MAKE THIS HAPPEN TO TRULY
01:36PM 14 DETERMINE THE STORE SELECTION FOR THE ENTIRE CHAIN NOW, BASED
01:36PM 15 ON THE CRITERIA. WE ARE GOING TO TOUCH 2,000 STORES IN 2015
01:36PM 16 AND WOULD LIKE TO MAKE SURE WE PLACE 2 ROOMS IN THE STORES THAT
01:36PM 17 WE WANT TO SELECT FOR GOLD LEVEL. IF YOU CAN FINALIZE THE
01:36PM 18 STORE SELECTION CRITERIA BY THE END OF THIS WEEK, IT WOULD BE A
01:36PM 19 TREMENDOUS HELP."

01:36PM 20 SO MR. JHAVERI IS NOT SAYING WE'RE GOING TO TOUCH 2,000
01:36PM 21 STORES THAT ARE WELL EXPERIENCE STORES AND WE'RE GOING TO
01:36PM 22 SELECT A CERTAIN NUMBER OF THOSE FOR IT TO BE THERANOS STORES
01:36PM 23 AND THE REST ARE GOING TO BE COMPLETELY UNRELATED TO THERANOS,
01:36PM 24 THAT'S WHAT MR. JHAVERI IS TRYING TO CLAIM NOW.

01:36PM 25 HE SAYS, WE'RE GOING TO TOUCH 2,000 STORES IN 2015, I WANT

01:36PM 1 TO MAKE SURE THAT THEY HAVE 2 ROOMS IN THE STORES THAT ARE
01:36PM 2 SELECTED FOR THE GOLD LEVEL, OKAY? SO THOSE ARE JUST THE ONES
01:36PM 3 THAT ARE GOING TO BE GOLD LEVEL. THERE ARE THE OTHER STORES
01:36PM 4 THAT ARE NOT GOLD LEVEL, THAT DON'T HAVE THE SEPARATE BATHROOM
01:36PM 5 AND THE SEPARATE ROOM.

01:37PM 6 SO IF YOU GO TO THE NEXT SLIDE, THOSE ARE THE THERANOS
01:37PM 7 GOLD STORES. THAT'S WHAT MR. JHAVERI CONFIRMED. IT HAS THE
01:37PM 8 THERANOS SIGNAGE. IT HAS THE PLEASANT WAITING AREA, AND IT HAS
01:37PM 9 A SEPARATE BATHROOM, WHICH IS NOT IN THE PICTURE, BUT THAT WAS
01:37PM 10 SHOWN TO MR. JHAVERI. SO THAT'S WHAT WAS GOING TO BE SELECTED.

01:37PM 11 AND SO FOR MR. JHAVERI TO CLAIM NOW THAT, OH, THIS IS
01:37PM 12 TOUCHING 2,000 STORES, THAT WAS JUST SOME INDEPENDENT WALGREENS
01:37PM 13 PROGRAM THAT WAS CALLED WELL EXPERIENCE AND HAS NOTHING TO DO
01:37PM 14 WITH THERANOS. WHY WOULD HE BE REPORTING THAT TO MR. BALWANI?
01:37PM 15 WHY WOULD MR. BALWANI CARE ABOUT SOME OTHER PROGRAM THAT
01:37PM 16 WALGREENS HAD THAT HAS NOTHING TO DO WITH THERANOS?

01:37PM 17 AND WE KNOW THAT'S THE CASE BECAUSE OF THE WAY THAT
01:37PM 18 MR. JHAVERI TESTIFIED. SO HE SAYS ON CROSS, IS YOUR TESTIMONY
01:37PM 19 TODAY, MR. JHAVERI, THAT WHEN YOU SAID 2,000, YOU MEANT THESE
01:37PM 20 ARE WELL EXPERIENCE STORES THAT HAD NOTHING TO DO WITH
01:37PM 21 THERANOS?

01:37PM 22 AND HE SAYS NO. WHAT I WAS REFERRING TO WAS EXACTLY THE
01:37PM 23 PREVIOUS DOCUMENTS THAT WE WERE LOOKING AT, WHICH WAS THAT
01:38PM 24 WE'RE GOING TO TOUCH 2,000 STORES FOR WELL EXPERIENCE IN 2015.

01:38PM 25 OF THOSE 2,000 STORES, WE ARE PLANNING FOR 200 THERANOS

01:38PM 1 STORES, OR THERANOS SERVICES WITHIN THOSE STORES.

01:38PM 2 HE SAYS, I MAY NOT HAVE SAID WELL EXPERIENCE IN FRONT OF
01:38PM 3 2,000, BUT IT'S CONSISTENT WITH THE DOCUMENT THAT WE JUST
01:38PM 4 REVIEWED.

01:38PM 5 HE DOESN'T TALK ABOUT HOW IT'S JUST THE WELL EXPERIENCE
01:38PM 6 STORES. BUT HE'S SAYING, OKAY, I JUST OMITTED THOSE WORDS.

01:38PM 7 WELL, FIRST OF ALL, EVEN IF THAT WERE TRUE, WHAT IS
01:38PM 8 MR. BALWANI SUPPOSED TO TAKE AWAY FROM THE EMAIL WHEN HE'S TOLD
01:38PM 9 BY WALGREENS EXECUTIVE NAMED NIM JHAVERI WE'RE GOING TO TOUCH
01:38PM 10 2,000 STORES IN SEPTEMBER OF 2015, AND LET'S TALK ABOUT THE
01:38PM 11 ONES WHICH WILL BE SELECTED FOR THE GOLD LEVEL SERVICE.

01:38PM 12 MR. BALWANI WOULD TAKE AWAY THAT THIS PARTNERSHIP IS
01:38PM 13 EXPANDING, THIS IS FULL SYSTEMS GO, ALL SYSTEMS GO, AND WE'RE
01:38PM 14 GOING TO GO FORWARD.

01:38PM 15 AND SO WHAT HE TELLS MS. PETERSON, WHICH WE'LL GET TO, IT
01:38PM 16 COULD BE 900 STORES IN 2015, THAT'S A CONSERVATIVE ESTIMATE,
01:39PM 17 COMPARED TO WHAT MR. JHAVERI IS SAYING, NOT MR. BALWANI,
01:39PM 18 MR. JHAVERI IS SAYING.

01:39PM 19 BUT THIS TESTIMONY, HERE'S THE REST OF THE PICTURE HERE.
01:39PM 20 YOU NEVER TALK ABOUT WELL EXPERIENCE?

01:39PM 21 HE SAYS THAT'S CORRECT IN THAT EMAIL. I'M SORRY, IN THE
01:39PM 22 VIDEO CLIP.

01:39PM 23 SO YOU MIGHT REMEMBER AT TRIAL THERE WAS SOME PREVIOUS
01:39PM 24 TESTIMONY THAT MR. JHAVERI GAVE WHERE HE HAD GIVEN TESTIMONY
01:39PM 25 BEFORE, AND WE PLAYED FOR YOU, IT'S NOT IN EVIDENCE, BUT YOU

01:39PM 1 SAW IT AT THE TIME. IT WAS PLAYED, SOME PRIOR TESTIMONY, WHERE
01:39PM 2 HE HAD TALKED ABOUT THIS SAME EMAIL, AND HE DIDN'T TESTIFY
01:39PM 3 ANYTHING ABOUT, WELL, THESE ARE JUST WELL EXPERIENCE STORES AND
01:39PM 4 WE'RE ONLY GOING TO PICK 200.

01:39PM 5 HE SAID, YEAH, WE COULD, WE COULD GET THE 2,000 STORES AND
01:39PM 6 OF COURSE EVERYTHING ELSE, CUSTOMER EXPERIENCE AND ALL OF THE
01:39PM 7 OTHER METRICS, INCLUDING FINGERSTICK PERCENTAGE HAVE TO GET
01:40PM 8 WHERE THEY NEED TO GET. BUT, YEAH, WE WERE PLANNING FOR 2,000
01:40PM 9 STORES. THAT IS WHAT HE SAID IN PREVIOUS TESTIMONY. HE WAS
01:40PM 10 SINGING A DIFFERENT TUNE ABOUT THIS PARTICULAR POINT ON THE
01:40PM 11 STAND.

01:40PM 12 YOU KNOW, IT'S NOT THAT MR. JHAVERI IS A BAD PERSON, IT'S
01:40PM 13 JUST THAT NOBODY WANTS TO BE A CHEERLEADER FOR THERANOS NOW.
01:40PM 14 LOOK AT WHERE WE ARE, OKAY?

01:40PM 15 LET'S KEEP GOING.

01:40PM 16 HE ALSO HAD TO ADMIT IN PRIOR TESTIMONY, HE SAID HE AGREED
01:40PM 17 AS OF AUGUST OF 2014 THIS 2500 WAS HIS PROJECTION.

01:40PM 18 AND THIS IS HIS TESTIMONY UNDER OATH IN A PRIVATE
01:40PM 19 PROCEEDING.

01:40PM 20 SO HE SAID DIFFERENT THINGS AT DIFFERENT TIMES ABOUT THIS
01:40PM 21 POINT.

01:40PM 22 BUT IF YOU HAD ANY DOUBT ABOUT THIS PARTNERSHIP BEING AN
01:40PM 23 EXPANSIVE PROJECT AT THIS POINT IN TIME IN THE SUMMER, LATE
01:40PM 24 SUMMER OF '14, LET'S LOOK AT THE REST OF THESE THINGS THAT WE
01:40PM 25 HAD TO SHOW YOU, IS THE DEFENSE.

01:40PM 1 SO HERE'S MR. JHAVERI'S EXCHANGE WITH WADE MIQUELON. AT
01:40PM 2 THIS POINT MR. MIQUELON WAS LEAVING WALGREENS. AND MR. JHAVERI
01:41PM 3 WRITES TO MR. MIQUELON AND SAYS, "THANK YOU AND ABSOLUTELY WE
01:41PM 4 WILL STAY IN TOUCH. ALSO, WANTED TO LET YOU KNOW WHAT WE ARE
01:41PM 5 DOING WITH THERANOS. THE PROGRESS HAS BEEN GREAT SINCE WE
01:41PM 6 PRESENTED TO YOU IN MARCH. I PROMISED YOU WE WILL GET THIS
01:41PM 7 DONE -- SEE BELOW."

01:41PM 8 AND MR. MIQUELON SAYS, "WOW. KEEP ROCKIN IT. WADE."

01:41PM 9 SO IS THIS MR. JHAVERI REPORTING THINGS ARE NOT REALLY
01:41PM 10 WORKING OUT AND WE'RE NOT GOING TO EXPAND CONTRACTING? HE IS
01:41PM 11 GOING TO GET THIS DONE, AND HE PROMISED MR. MIQUELON, AND HE'S
01:41PM 12 GOING TO GET THIS DONE. THAT'S EXHIBIT 20235.

01:41PM 13 LET'S GO TO THE NEXT SLIDE.

01:41PM 14 MR. JHAVERI HAD TO AGREE THAT IF THERANOS WAS IN EVERY HCC
01:41PM 15 LOCATION, THAT WOULD BE RIGHT THERE, 480 STORES JUST WITH THE
01:41PM 16 HCC PROGRAM.

01:41PM 17 AND I TALKED ABOUT THIS POINT BEFORE, BUT THAT'S THE \$59
01:42PM 18 FOR THE HCC STD PANEL AND ON THE PROJECTION THAT WAS MADE FROM
01:42PM 19 MR. GROSSMAN, THE NORMAL REQUISITION PER PATIENT WAS GOING TO
01:42PM 20 BE \$35.

01:42PM 21 SO AS I SAID, IT WAS GOING TO BE MORE LUCRATIVE FOR THE
01:42PM 22 STD PANEL. SO EVEN THOUGH THERE WERE FEWER TESTS, THAT DIDN'T
01:42PM 23 MATTER. THEY WERE GOING TO GET A LITTLE BIT HIGHER FEE.

01:42PM 24 OKAY. LET'S TALK ABOUT THE NEXT EXHIBIT WHICH THE
01:42PM 25 GOVERNMENT SHOWED YOU. THIS IS AUGUST 15TH, MR. JHAVERI TO

01:42PM 1 MR. BALWANI.

01:42PM 2 HE SAYS, "THERE HAS BEEN A LOT OF DISCUSSION WITH THE NEW
01:42PM 3 LEADERSHIP."

01:42PM 4 SO WHAT WAS GOING ON AT THIS POINT IN WALGREENS WAS THAT
01:42PM 5 THEY WERE GOING THROUGH WITH A MERGER WITH ANOTHER COMPANY
01:42PM 6 CALLED BOOTS ALLIANCE. AND MR. JHAVERI TALKED ABOUT THE BOOTS
01:43PM 7 PHARMACY STORES IN EUROPE. AND THERE WERE OTHER LEADERSHIP
01:43PM 8 COMING ON. MR. GREG WASSON WAS LEAVING. OTHER LEADERSHIP WAS
01:43PM 9 COMING ON. SO UNDERSTANDABLY WALGREENS WAS TAKING A LOOK AT
01:43PM 10 THIS.

01:43PM 11 AND HE SAYS, "AS YOU CAN IMAGINE, OUR PARTNERSHIP IS ONE
01:43PM 12 AT THE CORE."

01:43PM 13 MR. JHAVERI WROTE, "AND WE HAVE MADE UNBELIEVABLE PROGRESS
01:43PM 14 IN THE SHORT 5 MONTHS -- I RECEIVED EMAILS FROM SEVERAL LEADERS
01:43PM 15 TELLING ME THIS."

01:43PM 16 SO THAT'S WHAT MR. JHAVERI IS REPORTING.

01:43PM 17 "HOWEVER, IT WILL BE IMPORTANT THAT WE DRIVE WITH A SINGLE
01:43PM 18 FOCUS TOGETHER. THE 2 AREAS WHICH MUST BE FOCUSSED ON," AND HE
01:43PM 19 SAYS TWO THINGS. PATIENTS PER DAY WITH A 4-PLUS EXPERIENCE.
01:43PM 20 THEY ARE ALREADY THERE. WE SAW THE CHART.

01:43PM 21 VENOUS PERCENT IN THE 10 PERCENT RANGE.

01:43PM 22 SO AS I SAID, THAT WAS A METRIC. THAT WAS IMPORTANT. IT
01:43PM 23 WASN'T THE ONLY THING, AS THE GOVERNMENT WANTS YOU TO BELIEVE
01:43PM 24 THAT WITHOUT THAT THE WHOLE THING IS DEAD AND WALGREENS LIKED
01:43PM 25 THE TRAFFIC IN THEIR STORES, THEY LIKED THE PATIENT EXPERIENCE,

01:43PM 1 THEY LIKED THE FACT THAT THEY WERE HAVING CUSTOMERS COME IN
01:44PM 2 THAT WOULDN'T OTHERWISE VISIT WALGREENS STORES, ALL OF THAT.

01:44PM 3 BUT VENOUS PERCENTAGE IS, IN FACT, ONE OF THE METRICS.

01:44PM 4 BUT LET'S TALK ABOUT HOW IMPORTANT THAT WAS TO WALGREENS.

01:44PM 5 THE GOVERNMENT SHOWED YOU A DOCUMENT WHERE MR. BALWANI EARLIER
01:44PM 6 IN TIME HAD SAID, WELL, WE'RE HOPING TO BE, YOU KNOW, BELOW
01:44PM 7 5 PERCENT BY THE END OF THE YEAR, BUT THEN AT THIS POINT IN
01:44PM 8 TIME, THIS IS AUGUST, THIS IS FROM THE AUGUST 2014 PARTNERSHIP
01:44PM 9 MEETING, THE PERCENT OF VENOUS DRAWS SHOULD BE BELOW 10 PERCENT
01:44PM 10 BY AUGUST 31ST, 2015. SO WALGREENS AND THERANOS, ACCORDING TO
01:44PM 11 THE PARTNERSHIP MEETING MINUTES, AGREED THAT THAT WAS THE
01:44PM 12 DEADLINE.

01:44PM 13 SO AT THIS POINT IN AUGUST, THERE WAS PLENTY OF TIME TO
01:44PM 14 GET THAT VENOUS PERCENT DOWN. IT WASN'T SOMETHING IMMINENT, IT
01:44PM 15 WASN'T SOMETHING PRESSING, IT WASN'T GOING TO INTERFERE WITH
01:44PM 16 THE EXPANSION, AND THAT WAS ALL SYSTEMS GO. THAT WAS THE
01:44PM 17 DEADLINE.

01:44PM 18 AND THE GOVERNMENT DIDN'T SHOW YOU THAT BECAUSE THEY LIKED
01:44PM 19 THE EARLIER DEADLINE THAT WAS PROJECTED EARLIER. BUT THAT'S
01:45PM 20 THE DEADLINE BETWEEN THE MEETING WITH WALGREENS AND THERANOS,
01:45PM 21 AND AUGUST 31ST, 2015, ABOUT A YEAR AWAY.

01:45PM 22 SO THE RELATION BETWEEN THERANOS AND WALGREENS, IT DIDN'T
01:45PM 23 STOP IN THE SUMMER OF 2014. THE GOVERNMENT WANTS YOU TO THINK
01:45PM 24 THAT BY THE TIME THE FALL 2014 INVESTORS CAME IN, LIKE
01:45PM 25 MR. MOSLEY AND RDV, THAT THIS WAS DEAD, AND ANYTHING

01:45PM 1 MR. BALWANI SAID ABOUT THE PROSPECTS FOR EXPANDING A
01:45PM 2 PARTNERSHIP FOR WALGREENS WERE FRAUDULENT. NO.
01:45PM 3 THE DATA, THE DOCUMENTS SHOW THAT THIS PARTNERSHIP WAS
01:45PM 4 EXPANDING. THAT'S WHAT MR. BALWANI WOULD HAVE REASONABLY
01:45PM 5 BELIEVED. AND IT DIDN'T STOP IN THE SUMMER. IT KEPT GOING.
01:45PM 6 AND THIS IS IN OF NOVEMBER OF 2014. SO THESE ARE JUST
01:45PM 7 SOME COMMENTS FROM THAT MEETING, YOU KNOW, INPUT FROM PEOPLE
01:46PM 8 WHO USED THE SERVICE. THIS WAS AN RN, A NURSE, AND SHE WAS
01:46PM 9 ALSO A PATIENT.
01:46PM 10 SHE SAID THAT IT WAS GREAT, FAST, AND PAINLESS. ALL OF MY
01:46PM 11 PHYSICIANS AND PATIENTS ARE GOING TO HEAR ABOUT THERANOS.
01:46PM 12 IF YOU GO TO THE EXHIBITS, THIS IS EXHIBIT 2214, AND
01:46PM 13 YOU'LL SEE ALL OVER REALLY POSITIVE PATIENT REPORTS, AND SOME
01:46PM 14 NEGATIVE ONES COMPLAINING ABOUT CERTAIN ASPECTS. YOU KNOW, THE
01:46PM 15 BATHROOM WAS TOO FAR AWAY OR SOMETHING LIKE THAT. BUT THOSE
01:46PM 16 ARE THE EXHIBITS.
01:46PM 17 IF YOU GO TO THE NEXT PAGE, NOVEMBER, THIS METRIC OF WHERE
01:46PM 18 DO YOU TYPICALLY GET YOUR PRESCRIPTIONS FILLED? IT WAS STILL
01:46PM 19 SHOWING A LOT OF PEOPLE COMING INTO WALGREENS WHO WERE GETTING
01:46PM 20 THEIR PRESCRIPTIONS FILLED, OTHERWISE AT OTHER PHARMACIES. SO
01:46PM 21 THEY WERE GETTING THAT FOOT TRAFFIC.
01:46PM 22 THE LIKELIHOOD TO RETURN METRIC. STILL OFF THE CHARTS.
01:46PM 23 NOW WE'RE DOWN TO 4 PERCENT WHO WOULD NOT RETURN.
01:46PM 24 AND THEN IN NOVEMBER OF 2014, THEY WERE EVEN DRAWING UP
01:47PM 25 PLANS FOR THE PRIVATE HEALTH ROOM LAYOUT WITH SHARED SERVICES.

01:47PM 1 SO THESE ARE NOT THE GOLD SERVICES, THESE ARE THE SHARED
01:47PM 2 SERVICES. AND THERE'S GOING TO BE A CENTRIFUGE, AND THEY ARE
01:47PM 3 ALREADY DRAWING UP THE PLANS FOR WHAT THESE STORES ARE GOING TO
01:47PM 4 LOOK LIKE.

01:47PM 5 OKAY. SO I WANT TO TALK ABOUT --
01:47PM 6 IF YOU GO TO SLIDE 272, MR. ALLEN.

01:47PM 7 SO THIS IS AN EMAIL WHERE THE GOVERNMENT SHOWED YOU WHERE
01:47PM 8 ON NOVEMBER 19TH, 2014 -- THIS IS, BY THE WAY, AFTER
01:47PM 9 MR. MOSLEY'S INVESTMENT AND RDV'S INVESTMENT, WHERE MR. BALWANI
01:47PM 10 WANTS TO MS. HOLMES "WE CAN'T SCALE WITH WAG."

01:47PM 11 AND THE GOVERNMENT HOLDS IT UP AND SAYS, "WELL, AHA-HAH,
01:47PM 12 THEY REALIZE THEY ARE NOT GOING TO EXPAND."

01:47PM 13 LET'S TALK ABOUT WHAT THIS IS REALLY ABOUT.

01:47PM 14 SO ON THE LAST TEXT ON THAT MR. BALWANI SAYS, "THEY TOLD
01:47PM 15 OUR TEAM IN WAG MEETING THAT THEY DON'T INTEND TO OPEN MORE
01:48PM 16 PSC'S UNTIL JULY BECAUSE WE MISSED THE INTEGRATION DEADLINE.

01:48PM 17 THIS IS VERY FRUSTRATING TO MR. BALWANI BECAUSE THEY ARE
01:48PM 18 TALKING ABOUT THIS I.T. INTEGRATION ISSUE.

01:48PM 19 YOU MIGHT REMEMBER WHEN MR. JHAVERI TESTIFIED, HE TALKED
01:48PM 20 ABOUT THE DIFFICULTY BETWEEN THE WALGREENS I.T. DEPARTMENT,
01:48PM 21 WHICH IS MOVING MORE SLOWLY THAN PEOPLE MIGHT LIKE, AND THEN
01:48PM 22 THERANOS, AND THAT INTEGRATION WAS A BIGGER PROBLEM THAN YOU
01:48PM 23 WOULD INITIALLY THINK. SO THEY'RE TALKING ABOUT INTEGRATION OF
01:48PM 24 THE I.T., AND, OF COURSE, THAT WAS FRUSTRATING TO MR. BALWANI.

01:48PM 25 SO, YOU KNOW, YOU RATTLE OFF A TEXT TO YOUR BUSINESS

01:48PM 1 PARTNER AND ROMANTIC PARTNER AND YOU SAY WE CAN'T SCALE WITH
01:48PM 2 WAG. IS THAT THE SUM TOTAL OF WHAT MR. BALWANI WAS THINKING.

01:48PM 3 THE ANALOGY I THOUGHT OF WHEN I WAS THINKING ABOUT THIS
01:48PM 4 TEST WAS, YOU KNOW, A CHEF IN A RESTAURANT HAS A TOUGH NIGHT,
01:48PM 5 BUSY, THE SUPPLIES AREN'T RIGHT, THINGS ARE NOT GOING WELL, AND
01:48PM 6 HE SAYS -- THROWS DOWN HIS APRON AND SAYS I CAN'T WORK HERE
01:49PM 7 ANYMORE, I'M OUT OF HERE, AND I'M GOING TO OPEN MY OWN
01:49PM 8 RESTAURANT, OR WHATEVER. AND AN HOUR LATER, HE'S NOT DOING
01:49PM 9 THAT, RIGHT?

01:49PM 10 THE NEXT DAY AFTER SLEEPING ON IT, HE'S NOT DOING THAT.
01:49PM 11 SO PEOPLE SAY ALL KINDS OF THINGS IN TEXT MESSAGES AND YOU
01:49PM 12 CAN'T JUST HOLD THOSE THINGS UP.

01:49PM 13 BUT IT'S REALLY IMPORTANT TO UNDERSTAND WHAT IS REALLY
01:49PM 14 GOING ON. HE'S TALKING ABOUT THE INTEGRATION DEADLINE, AND
01:49PM 15 IT'S RIGHT THERE IN THE TEXT. AND MR. JHAVERI TESTIFIED ABOUT
01:49PM 16 THAT.

01:49PM 17 SO LET'S LOOK AT THAT. I WOULD SAY IT TAKES TIME TO
01:49PM 18 INCORPORATE INTO A LARGE FORTUNE 30 CORPORATION AND THE SYSTEMS
01:49PM 19 WE HAD, AND SO AT TIMES THAT WAS A LIMITING FACTOR IN HOW FAST
01:49PM 20 WE COULD MOVE. THAT WAS WHAT MR. JHAVERI SAID.

01:49PM 21 GO TO THE NEXT ONE.

01:49PM 22 ALL OVER THESE PARTNERSHIP MEETING SLIDES, AND THIS IS
01:49PM 23 ABOUT INTEGRATION. YOU CAN SEE TIMELINE 12/15/2014,
01:50PM 24 JANUARY 31ST, 2015 DATES. THIS IS NEEDING PROGRESS, AMONG
01:50PM 25 OTHER THINGS, THE I.T. PART OF THIS. AND THEN THERE'S THE

01:50PM 1 SECURITY ASSESSMENT. AND THEN THIS TITLE OF THE SLIDE IS
01:50PM 2 THERANOS INTEGRATION NEXT STEPS.

01:50PM 3 THEN THE NEXT SLIDE.

01:50PM 4 IF YOU GO TO THE PREVIOUS ONE, MR. ALLEN. MR. ALLEN, IT
01:50PM 5 WILL BE 22 -- THANK YOU.

01:50PM 6 THERE'S THE WALGREENS.COM INTEGRATION, AND THIS IS
01:50PM 7 11-14-14. SO RIGHT AROUND THE SAME TIME AS THIS TEXT MESSAGE
01:50PM 8 THAT MR. BALWANI IS SAYING "WE CAN'T SCALE WITH WAG," AND IT'S
01:50PM 9 ABOUT INTEGRATION, THAT'S WHAT IS GOING ON. THEY'RE HAVING
01:51PM 10 SOME I.T. ISSUES WITH WALGREENS. THAT'S ALL IT IS.

01:51PM 11 THE GOVERNMENT IS ACTING LIKE THIS IS SOME KIND OF
01:51PM 12 INCRIMINATING SMOKING GUN, BUT IT'S NOT THAT WHEN YOU LOOK AT
01:51PM 13 THE REST OF THE EVIDENCE, ALL OF THE EVIDENCE.

01:51PM 14 OKAY. LET'S GO TO -- AND THIS WALGREENS SECTION IS A LONG
01:51PM 15 SECTION, BUT WE'RE GETTING THERE. SO LET'S TALK ABOUT
01:51PM 16 WALGREENS INTERNAL CORRESPONDENCE.

01:51PM 17 SO THIS IS OUR MARCH 30TH, 2015.

01:51PM 18 NOW, I TOLD YOU THE MUSIC DIDN'T STOP IN AUGUST OF 2014.
01:51PM 19 THIS PARTNERSHIP KEPT GOING. THIS IS WHEN THEY HAVE THE NEW
01:51PM 20 LEADERSHIP.

01:51PM 21 SO A GENTLEMAN NAMED JONATHAN SPITZER IS WRITING TO A
01:51PM 22 GROUP OF PEOPLE, INCLUDING MR. JHAVERI AND OTHER SENIOR PEOPLE
01:51PM 23 AT WALGREENS, AND HE SAYS, PLEASE FIND ATTACHED A QUIT SNAPSHOT
01:51PM 24 OF THE FINANCIAL AND OPERATIONAL PERFORMANCE OF THE THERANOS
01:51PM 25 PILOT.

01:51PM 1 AND THEN YOU CAN SEE IN THE HIGHLIGHTED LANGUAGE HE SAYS,
01:52PM 2 I HAVE NOT FORESTED -- I THINK THAT MIGHT BE FORECASTED -- THE
01:52PM 3 CHANGE IN LABOR AT THIS TIME, BUT WE SHOULD EXPECT THE PROJECT
01:52PM 4 OPERATIONAL EXPENSES TO GO FROM AROUND \$100 A MONTH TO ABOUT
01:52PM 5 \$20 TO \$40,000 PER MONTH. THE NEW CONTRACT RENEGOTIATIONS ARE
01:52PM 6 TAKING PLACE.

01:52PM 7 SO YOU MIGHT REMEMBER FROM MR. JHAVERI'S TESTIMONY THAT
01:52PM 8 THERE WAS AN ISSUE OF PHLEBOTOMISTS, AND MR. JHAVERI TESTIFIED
01:52PM 9 THAT AS LONG AS THERE WERE PHLEBOTOMISTS IN THE WALGREENS
01:52PM 10 STORES -- PHLEBOTOMISTS ARE THE PEOPLE WHO TAKE THE VEIN DRAWS
01:52PM 11 IN THE ARM, RIGHT? AS LONG AS THERE WERE PHLEBOTOMISTS, THERE
01:52PM 12 WAS A COST FOR PHLEBOTOMISTS.

01:52PM 13 AND FOR THE ARIZONA PROJECT OF THE 40 STORES, THERANOS IS
01:52PM 14 PAYING FOR THOSE PHLEBOTOMISTS, BUT WHEN THIS WENT TO SCALE
01:52PM 15 NATIONALLY, IT WAS GOING TO BE WALGREENS'S RESPONSIBILITY TO
01:52PM 16 PAY A PHLEBOTOMIST.

01:52PM 17 SO ONE OF THE REASONS WHY WALGREENS THOUGHT THAT GETTING
01:52PM 18 THE FINGERSTICK PERCENTAGE HIGHER AND THE VENOUS DRAW
01:52PM 19 PERCENTAGE DOWN, WAS SO THAT THEY WOULD HAVE TO PAY LESS
01:52PM 20 PHLEBOTOMISTS. THAT WOULD BE A COST THAT THEY COULD ELIMINATE.

01:53PM 21 SO THIS NEW ARRANGEMENT THAT THEY'RE DISCUSSING AND YOU
01:53PM 22 HEARD FROM MR. JHAVERI ABOUT A NEW BUSINESS RELATIONSHIP AND
01:53PM 23 THEY'RE NEGOTIATING A NEW CONTRACT, THAT WAS GOING TO MEAN THAT
01:53PM 24 THERANOS WOULD HAVE TO PAY FOR THE PHLEBOTOMISTS.

01:53PM 25 AND YOU CAN SEE, AND WE'LL GO THROUGH THESE IN A MINUTE,

01:53PM 1 WHEN THE PARTNERSHIP MEETING MINUTES CONTINUED, THE FINGERSTICK
01:53PM 2 ISSUE WAS COMPLETELY DROPPED ONCE THE COST OF PHLEBOTOMISTS IS
01:53PM 3 NO LONGER ON WALGREENS.

01:53PM 4 AND THAT'S WHAT THIS IS. SOME OF THE OPERATIONAL EXPENSES
01:53PM 5 MAY GO DOWN BECAUSE WALGREENS IS NOT GOING TO BE PAYING FOR
01:53PM 6 PHLEBOTOMISTS WITH THIS NEW BUSINESS MODEL.

01:53PM 7 AND THEN HE GOES ON. HE SAYS WITH THERANOS TAKING ON
01:53PM 8 BUILD OUT CAPITAL COSTS AND STAFFING PHLEBOTOMISTS WITH
01:53PM 9 WALGREENS BEING LIABLE FOR CHECK IN LABOR, OUR GOAL WOULD BE TO
01:53PM 10 RECEIVE 3 TIMES RENT AND MINIMUM \$8 PER PATIENT WHICH WOULD
01:53PM 11 TRANSLATE TO AN EBIT OF \$125 MILLION PER YEAR, BUT THIS IS THE
01:53PM 12 KEY PART, AT SCALE. SO AT THIS POINT -- THIS IS MARCH OF 2015,
01:54PM 13 WALGREENS IS SAYING THE SCALE WOULD BE 2,501 LOCATIONS AND 22.5
01:54PM 14 PATIENTS PER DAY.

01:54PM 15 SO WALGREENS IS STILL INTERNALLY TALKING ABOUT WHAT THIS
01:54PM 16 WOULD LOOK LIKE AT SCALE, WHICH IS THAT NUMBER OF 2500, IT
01:54PM 17 COULD HAVE BEEN A LITTLE MORE THAN THAT, LOCATIONS.

01:54PM 18 SO EVEN AT THIS LATER DATE, WELL AFTER THE INVESTORS FROM
01:54PM 19 THERANOS CAME IN, THEY'RE STILL TALKING ABOUT SCALING TO THAT
01:54PM 20 LEVEL INTERNALLY AT WALGREENS.

01:54PM 21 LET'S GO TO THE NEXT SLIDE.

01:54PM 22 THE COURT: CAN YOU FINISH ON THIS SLIDE QUICKLY OR
01:54PM 23 SHOULD WE TAKE A BREAK?

01:54PM 24 MR. COOPERSMITH: I'M HAPPY TO TAKE THE BREAK NOW,
01:54PM 25 YOUR HONOR.

01:54PM 1 THE COURT: LET'S DO THAT. THANK YOU. I APPRECIATE
01:54PM 2 THAT, MR. COOPERSMITH.

01:54PM 3 LADIES AND GENTLEMEN, LET'S TAKE OUR AFTERNOON BREAK NOW.
01:54PM 4 SHOULD THAT BE ABOUT 20, 25 MINUTES. LET'S DO THAT. THANK
01:54PM 5 YOU.

01:55PM 6 (JURY OUT AT 1:55 P.M.)

01:55PM 7 THE COURT: THANK YOU. PLEASE BE SEATED. WE'LL
01:55PM 8 TAKE ABOUT 20, 25 MINUTES RIGHT NOW.

01:55PM 9 (RECESS FROM 1:55 P.M. UNTIL 2:25 P.M.)

02:25PM 10 THE COURT: THANK YOU. WE'RE BACK ON THE RECORD.
02:25PM 11 OUR JURY IS PRESENT. ALL COUNSEL AND MR. BALWANI ARE PRESENT.

02:25PM 12 BEFORE, MR. COOPERSMITH, I INVITE YOU TO CONTINUE, I JUST
02:25PM 13 WANT TO GO OVER SCHEDULING WITH THE JURY FOR JUST A MOMENT.

02:25PM 14 LET ME -- MY FIRST QUESTION IS ARE ANY OF YOU AVAILABLE TO
02:26PM 15 GO UNTIL 5:00, OR JUST A LITTLE BIT BEFORE 5:00 THIS AFTERNOON?
02:26PM 16 I SHOULD ASK THAT QUESTION. WOULD THAT CAUSE AN INCONVENIENCE
02:26PM 17 FOR ANYONE?

02:26PM 18 JUROR NUMBER 3, YOU THINK THAT WILL CAUSE AN INCONVENIENCE
02:26PM 19 FOR YOU? THAT'S FINE. THANK YOU. I JUST NEEDED TO KNOW THAT.

02:26PM 20 TOMORROW I BELIEVE WE'RE SCHEDULED TO START AT NOON, AND
02:26PM 21 WE'LL GO UNTIL -- I THINK WE'RE SCHEDULED UNTIL 4 :30 TOMORROW.

02:26PM 22 CAN I PUSH THAT CLOSER TO 5:00? I WON'T KEEP YOU UNTIL
02:26PM 23 5:00, BUT I MIGHT -- EVEN AN EXTRA 10 OR 15 MINUTES MIGHT BE
02:26PM 24 HELPFUL IF THAT WOULD WORK. IF YOU COULD PLAN YOUR SCHEDULES
02:26PM 25 THAT WAY.

02:26PM 1 AND THEN FRIDAY, THIS FRIDAY I DON'T KNOW IF WE'LL BE
02:26PM 2 FINISHED WITH OUR ARGUMENTS AND INSTRUCTIONS, BUT IF NEED BE,
02:26PM 3 CAN FOLKS GO AGAIN UNTIL 4:30, CLOSE TO 5:00 ON FRIDAY? IF YOU
02:27PM 4 COULD MAYBE WORK ON YOUR SCHEDULES THIS AFTERNOON, AND I'LL
02:27PM 5 CHECK WITH YOU TOMORROW AS TO THAT.

02:27PM 6 OKAY. GREAT.

02:27PM 7 THANK YOU. THANK YOU VERY MUCH.

02:27PM 8 MR. COOPERSMITH, WOULD YOU LIKE TO CONTINUE?

02:27PM 9 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

02:27PM 10 OKAY. WELCOME BACK EVERYONE AGAIN.

02:27PM 11 WHEN WE LEFT OFF, I WAS TALKING ABOUT THE WALGREENS
02:27PM 12 PARTNERSHIP WITH THERANOS.

02:27PM 13 AND AS YOU SAW, THIS WAS EXTREMELY IMPORTANT FOR INVESTORS
02:27PM 14 IN THERANOS BECAUSE THIS WAS REALLY THE TICKET TO BASICALLY A
02:27PM 15 UNICORN SITUATION WHERE THERANOS WAS GOING TO BE AT THAT LEVEL
02:27PM 16 OF COMPANY.

02:27PM 17 SO WE'VE BEEN GOING THROUGH THESE PARTNERSHIP MEETING
02:27PM 18 MINUTES AND OTHER EMAILS, AND I JUST WANT TO CONTINUE WITH THAT
02:27PM 19 FOR JUST A FEW MINUTES.

02:28PM 20 BASICALLY, AS I WAS SAYING, EVEN LATE INTO THE YEAR IN
02:28PM 21 2014, WELL AFTER THE GOVERNMENT CLAIMS THAT THIS PARTNERSHIP
02:28PM 22 WAS GOING DOWNHILL OR SOUTH, THEY WERE STILL VERY MUCH TALKING
02:28PM 23 ABOUT A MAJOR EXPANSION. AND WE SAW THAT IN THE AUGUST 2014
02:28PM 24 PARTNERSHIP MEETING MINUTES IN PARTICULAR WHERE WALGREENS WAS
02:28PM 25 TALKING ABOUT A MAJOR EXPANSION.

MR. JHAVERI TALKED ABOUT TOUCHING 2,000 STORES.

WE'RE NOW AT THIS EMAIL AT THE END OF THE YEAR.

AS I SAID, THERE WAS A NEW BUSINESS RELATIONSHIP BEING NEGOTIATED, AND THAT HAD HAPPENED FROM TIME TO TIME WITH WALGREENS AND THERANOS. THERE WAS THE ORIGINAL AGREEMENT IN 2010, THERE WAS THE AMENDMENT IN 2012, THERE WAS THE ADDITIONAL AMENDMENT AT THE END OF '13 WHEN WALGREENS COMMITTED TO THE \$75 MILLION AND THE NATIONAL ROLLOUT, AND THEN THERE WAS A NEW DISCUSSION ABOUT A DIFFERENT MODEL WHERE THERANOS WOULD CAPTURE MORE OF THE FEE AND PAY FOR SOME OF THE PHLEBOTOMISTS AND IT WOULD REDUCE WALGREENS'S COST.

SO THIS EMAIL WE'RE NOW LOOKING AT ON THE SCREEN IS FROM DECEMBER 15TH, 2014. AND IT'S MR. FLUEGEL, WHO AS YOU CAN SEE FROM THE EMAIL IS SENIOR VICE PRESIDENT, CHIEF STRATEGY AND BUSINESS DEVELOPMENT OFFICER AT WALGREENS. AND HE'S REPORTING ABOUT A MEETING THAT OCCURRED.

AND HE SAYS, "THANKS AGAIN FOR HOSTING US LAST WEEK," AND HE'S WRITING TO MR. BALWANI. "WE FOUND IT VERY PRODUCTIVE AND IT WAS GREAT TO SPEND TIME WITH YOU BOTH," ELIZABETH AND SUNNY.

"AS ALEX MENTIONED AT THE CLOSE OF THE MEETING, WE WANTED TO CHECK IN WITH GREG AND STEFANO ON THE REVISED ROLLOUT APPROACH WE LAID OUT THE MEETING. THAT HAPPENED THIS WEEKEND AND THEY BOTH ARE IN AGREEMENT WITH THE APPROACH WE DISCUSSED LAST WEEK."

SO AS YOU CAN SEE FROM THE NEXT SLIDE, MR. JHAVERI'S

02:29PM 1 TESTIMONY, THIS WAS AT AS HIGH A LEVEL AT WALGREENS AS YOU
02:30PM 2 COULD POSSIBLY GET.

02:30PM 3 STEFANO WAS THE NEW INCOMING CEO FROM THE BOOTS ALLIANCE
02:30PM 4 SIDE, AND GREG WASSON WAS THE OUTGOING CEO. SO AT THE VERY
02:30PM 5 HIGHEST LEVELS OF WALGREENS THEY WERE TALKING ABOUT BOTH BEING
02:30PM 6 IN AGREEMENT WITH THE APPROACH AND MOVING FORWARD ON THE
02:30PM 7 PARTNERSHIP WITH THIS NEW BUSINESS MODEL WHERE THERANOS WOULD
02:30PM 8 TAKE SOME OF THE COSTS OVER FROM WALGREENS.

02:30PM 9 LATER, IF YOU GO TO THE NEXT SLIDE, THERE ARE SOME MORE
02:30PM 10 TEXT MESSAGES.

02:30PM 11 SO BRAD WASSON TEXTED. AND THIS IS MR. BALWANI PASTING
02:30PM 12 THAT INTO THE TEXT TO MS. HOLMES. IT SAYS, "HOPE CONVERSATION
02:30PM 13 GOES WELL TOMORROW BETWEEN NIM AND I BELIEVE IN THE VISION WE
02:30PM 14 HAVE TOGETHER, BELIEVE IN YOU AND ELIZABETH, SIGNED
02:30PM 15 BRAD WASSON, ANOTHER EXECUTIVE AT WALGREENS AND THE BROTHER OF
02:30PM 16 GREG WASSON.

02:31PM 17 AND THEN MR. BALWANI SAYS, "GOING THRU CVS CONTRACT. WE
02:31PM 18 CAN'T WORK WERE WAG OR CVS. BOTH ARE SAME."

02:31PM 19 SO DO YOU REMEMBER THESE ARE THE TIMES THAT THE NEW
02:31PM 20 CONTRACT NEGOTIATIONS WITH WALGREENS ARE GOING ON.

02:31PM 21 "AND SAFEWAY SAYS."

02:31PM 22 "WE NEED TO THINK THRU OUR DISCUSSION ON THIS TOPIC."

02:31PM 23 AND THEN MEANING TOMORROW'S?

02:31PM 24 AND THEN MR. BALWANI SAYS, "NO. OUR OWN STORES."

02:31PM 25 SO, AGAIN, THIS IS LIKE THE ANALOGY I GAVE YOU BEFORE THE

02:31PM 1 BREAK, OKAY? I'M HAVING A HARD NIGHT AS A CHEF IN THE KITCHEN
02:31PM 2 AND I'M THROWING DOWN MY APRON, I'M OUT OF HERE, AND I'M
02:31PM 3 OPENING UP MY OWN RESTAURANT.

02:31PM 4 AND THEN IN THE LIGHT OF DAY, THE NEXT DAY, I'M GOING BACK
02:31PM 5 TO WORK TO MY VERY GOOD JOB AS A CHEF.

02:31PM 6 THIS IS FRUSTRATIONS THAT ALWAYS OCCUR WITH NEGOTIATIONS
02:31PM 7 AND NEW CONTRACTS, BUT YOU CAN SEE FROM THE TEXT FROM
02:31PM 8 BRAD WASSON, WALGREENS IS STILL VERY SUPPORTIVE.

02:31PM 9 AND WE KNOW THAT'S THE CASE BECAUSE IF YOU GO TO THE NEXT
02:31PM 10 SLIDE, THESE PARTNERSHIP MEETING MINUTES, AND IF YOU LOOK AT
02:32PM 11 THE EXHIBITS, THEY'RE NUMBERED IN THE BOTTOM LEFT, THE
02:32PM 12 PARTNERSHIP MEETINGS CONTINUE. IN FACT, THEY CONTINUE ALL OF
02:32PM 13 THE WAY TO OCTOBER 15TH, 2015, WHEN THE NEGATIVE
02:32PM 14 "WALL STREET JOURNAL" ARTICLE COMES OUT.

02:32PM 15 SO ALL THROUGH 2015 AND WELL AFTER THE INVESTMENT MONEY
02:32PM 16 COMES INTO THERANOS, THERE ARE STILL ACTIVE DISCUSSIONS ABOUT
02:32PM 17 EXPANDING THE PARTNERSHIP.

02:32PM 18 ONE QUICK WORD ON THE NEXT SLIDE ABOUT RIGHT AFTER THAT
02:32PM 19 "WALL STREET JOURNAL" ARTICLE, YOU CAN SEE THERE'S A QUESTION
02:32PM 20 ABOUT HAVING THREE TO FOUR WEEKS BEFORE, IF YOU LOOK AT THAT
02:32PM 21 TEXT MESSAGE AT 7:35 P.M., THREE TO FOUR WEEKS, SO THEY HAD
02:32PM 22 STOPPED USING THE CTN.

02:32PM 23 DO YOU REMEMBER THIS IS THE TIME OF THE CMS INSPECTION,
02:32PM 24 AND THAT THEY HADN'T TOLD WALGREENS YET.

02:32PM 25 AND ELIZABETH IS TALKING ABOUT THAT ISSUE. AND

02:33PM 1 MR. BALWANI SAYS AT THIS POINT THEY KNOW. SO NEED TO BE
02:33PM 2 TRANSPARENT.

02:33PM 3 SO MR. BALWANI IS ENCOURAGING TRANSPARENCY WITH WALGREENS,
02:33PM 4 NOT THE OTHER WAY AROUND. IT'S MR. BALWANI WHO SAYS THAT.

02:33PM 5 AND YOU CAN SEE AT 7:42 MS. HOLMES SAYS, "I'M TRYING TO
02:33PM 6 REMEMBER WHAT OUR THINKING WAS ON THAT."

02:33PM 7 AND MR. BALWANI SAYS, "NONE. WE JUST DIDN'T TELL THEM
02:33PM 8 THINKING UNDER OUR NEW MODEL THIS DOESN'T MATTER."

02:33PM 9 REMEMBER, AS I SAID BEFORE, THAT WITH THE NEW BUSINESS
02:33PM 10 MODEL, THE WHOLE FINGERSTICK PERCENTAGE ISSUE WENT OUT THE
02:33PM 11 WINDOW. AND IT WAS NO LONGER -- AND IF YOU LOOK AT THOSE
02:33PM 12 EXHIBITS WITH THOSE PARTNERSHIP MEETING MINUTES, IT'S NO LONGER
02:33PM 13 DISCUSSED BECAUSE WALGREENS -- I'M SORRY, THERANOS WAS TAKING
02:33PM 14 OVER THAT COST. SO THAT WHETHER THEY DID CTN'S, FINGERSTICK,
02:33PM 15 OR NOT, THEY NO LONGER MATTERED, AND SO THEY DIDN'T TELL THEM
02:33PM 16 FOR THREE OR FOUR WEEKS, NOT THAT LONG A PERIOD OF TIME, BUT
02:33PM 17 MR. BALWANI IS URGING TRANSPARENCY THERE. THAT'S IN THE TEXT
02:33PM 18 MESSAGES WITH MS. HOLMES.

02:34PM 19 IF YOU GO TO THE NEXT SLIDE.

02:34PM 20 THIS IS IN MARCH OF 2015. SO THIS IS WHEN THE GOVERNMENT
02:34PM 21 IS CLAIMING AT THIS POINT THE PARTNERSHIP MUST BE LONG DEAD.

02:34PM 22 BUT HERE'S WHAT MR. KOZLOWSKI FROM WALGREENS SAYS. HE
02:34PM 23 SAYS, "THANKS FOR YOUR TIME YESTERDAY. ALTHOUGH THERE'S STILL
02:34PM 24 A LOT TO DO, I THINK WE MADE SOME GREAT PROGRESS."

02:34PM 25 AND THEN HE SAYS HE WANTS TO PUT TOGETHER AN 18-MONTH

02:34PM 1 EXECUTION PLAN AND 3-YEAR LONG RANGE PLAN. THAT'S ASSIGNED TO
02:34PM 2 SUNNY.

02:34PM 3 IDENTIFY ALL OF THE METROPOLITAN STATISTICAL AREAS AND
02:34PM 4 INDEX VERSUS CHICAGO.

02:34PM 5 DEFINE I.T. REQUIREMENTS FOR SCALE. THAT'S SOMETHING THAT
02:34PM 6 CASEY IS GOING TO TAKE ON.

02:34PM 7 AND MR. JHAVERI FORWARDS THAT EMAIL TO MR. BALWANI ON
02:34PM 8 MARCH 11TH, 2015.

02:34PM 9 SO THIS IS NOT, OKAY, WE'RE DONE WITH THIS, THE PILOT
02:34PM 10 DIDN'T WORK OUT, THE FINGERSTICK PERCENTAGE ISN'T GOOD ENOUGH.
02:34PM 11 THERE'S STILL, EVEN IN MARCH OF 2015, STILL TALKING ABOUT SCALE
02:35PM 12 AND LONG-RANGE PLANS IN IDENTIFYING ALL OF THE METROPOLITAN
02:35PM 13 STATISTICAL AREAS. AND AGAIN, THE DOCUMENTS THAT THE DEFENSE
02:35PM 14 HAD TO SHOW YOU, THE GOVERNMENT DID NOT.

02:35PM 15 MR. JHAVERI, IF YOU GO TO THE NEXT DOCUMENT, IN JUNE OF
02:35PM 16 2015. SO THIS IS VERY LATE IN THE GAME. MR. JHAVERI IS
02:35PM 17 SAYING, "THANK YOU SUNNY. WE ARE VERY EXCITED TO MOVE OUR
02:35PM 18 RELATIONSHIP TO THE NEXT LEVEL. I HAVE NO DOUBT THAT WE WILL
02:35PM 19 DRIVE SUCCESS FOR BOTH OF OUR ORGANIZATIONS AND MORE
02:35PM 20 IMPORTANTLY, OUR PATIENTS."

02:35PM 21 SO MR. JHAVERI AT THAT TIME IS A CHEERLEADER FOR THERANOS,
02:35PM 22 EVEN IF HE DOESN'T WANT TO BE ON THE WITNESS STAND NOW.

02:35PM 23 THE NEXT THING, YOU MIGHT REMEMBER THIS FROM TRIAL, BUT
02:35PM 24 THIS DIDN'T COME INTO EVIDENCE, BUT THERE WAS A SPREADSHEET
02:35PM 25 WITH, AS YOU CAN SEE ON THE LEFT THERE, INFORMATION ABOUT EVERY

02:35PM 1 WALGREENS STORE IN THE DATABASE. EXTREMELY CONFIDENTIAL
02:35PM 2 INFORMATION, SAYS MR. JHAVERI. AND THAT THIS DATA WAS SHARED
02:36PM 3 WITH THERANOS PURSUANT TO THE NONDISCLOSURE AGREEMENT THAT THEY
02:36PM 4 HAD.

02:36PM 5 SO IF THIS PARTNERSHIP WAS DYING OR DEAD AS THE GOVERNMENT
02:36PM 6 WANTS TO MAKE YOU THINK, WOULD WALGREENS BE SHARING ITS SUPER
02:36PM 7 SECRET CONFIDENTIAL INFORMATION ABOUT ALL OF ITS STORES WITH
02:36PM 8 THERANOS? THAT DOESN'T MAKE ANY SENSE.

02:36PM 9 BUT THAT'S WHAT HAPPENED. THE PARTNERSHIP WAS GOING
02:36PM 10 STRONG. THEY'RE EXPANDING. MR. BALWANI HAD EVERY REASON TO
02:36PM 11 BELIEVE THAT THEY WERE EXPANDING. AND THE REASON WHY THAT IS
02:36PM 12 REALLY IMPORTANT IS BECAUSE THE GOVERNMENT IS SAYING THAT WHEN
02:36PM 13 MR. BALWANI INTERACTED WITH INVESTORS LIKE LISA PETERSON FROM
02:36PM 14 IT RDV AND THE REST OF THE DEVOS FAMILY DECISION MAKERS, THAT
02:36PM 15 MR. BALWANI KNEW AT THAT TIME THAT THIS PARTNERSHIP WAS DEAD.

02:36PM 16 SO WHEN HE SAID, LOOK, THERE COULD BE 900 STORES IF THE
02:36PM 17 EXECUTION IS GOING RIGHT, THEY'RE SAYING THAT'S FRAUD BECAUSE
02:36PM 18 MR. BALWANI KNEW 900 STORES WAS NO POSSIBILITY BECAUSE
02:36PM 19 WALGREENS WAS TELLING HIM, WELL, AT MOST IT'S GOING TO BE 200
02:37PM 20 STORES. THAT IS NOT TRUE.

02:37PM 21 EVERYTHING -- ALL OF THE EVIDENCE, THE DOCUMENTARY
02:37PM 22 EVIDENCE SHOWS THAT, IN FACT, MR. BALWANI HAD EVERY REASON TO
02:37PM 23 BELIEVE, AND, IN FACT, IT WAS THE CASE THAT WALGREENS WANTED TO
02:37PM 24 EXPAND THIS PARTNERSHIP TO THOUSANDS OF STORES IN AUGUST OF
02:37PM 25 2014 AND EVEN LATER AFTER THAT.

02:37PM 1 SO WHEN MR. BALWANI WENT TO HIS INVESTOR INTERACTIONS,
02:37PM 2 THAT'S WHAT HE REASONABLY BELIEVED. SO THOSE STATEMENTS AND
02:37PM 3 REPRESENTATIONS ABOUT WHAT WAS POSSIBLE, THE PROJECTIONS ON HOW
02:37PM 4 MANY STORES, THOSE WERE TRUE. THOSE WERE GOOD FAITH
02:37PM 5 PROJECTIONS. AS JUDGE DAVILA WILL TELL YOU, GOOD FAITH IS PART
02:37PM 6 OF WHAT YOU HAVE TO CONSIDER HERE, AND THAT'S WHAT HAPPENED
02:37PM 7 WITH MR. BALWANI.

02:37PM 8 I WANT TO SWITCH TO A DIFFERENT SUBJECT NOW. THIS IS THE
02:37PM 9 TECHNOLOGY DEMONSTRATIONS THAT YOU HAVE HEARD SOME THINGS
02:37PM 10 ABOUT. SOMETIMES THEY'RE REFERRED TO AS DEMOS.

02:37PM 11 THIS IS BRINGING PEOPLE IN WHO HAVE AN INTEREST, WHICH
02:37PM 12 THEY'RE BUSINESS PARTNERS LIKE WALGREENS OR INVESTORS, AND
02:38PM 13 SHOWING THEM A LITTLE BIT ABOUT WHAT THE TECHNOLOGY IS.

02:38PM 14 SO LET'S GO THROUGH THAT SUBJECT.

02:38PM 15 SO, FIRST OF ALL, MR. EDLIN KNEW A LOT ABOUT THE SUBJECT
02:38PM 16 BECAUSE HE WAS INVOLVED IN SETTING THESE THINGS UP.

02:38PM 17 QUESTION: SOMETIMES DEMOS WERE JUST SO PEOPLE COULD SEE
02:38PM 18 THE SOFTWARE AND THE TECHNOLOGY?

02:38PM 19 CORRECT.

02:38PM 20 THEY DIDN'T WANT TO GET THEIR BLOOD DRAWN?

02:38PM 21 RIGHT.

02:38PM 22 SO THEY WERE EXAMPLES, AND THEY JUST WANTED TO SEE WHAT
02:38PM 23 THE SOFTWARE AND THE TECHNOLOGY LOOKED LIKE.

02:38PM 24 AND MR. EDLIN CONTINUED, THE WALGREENS DEMO IN AUGUST OF
02:38PM 25 '13, WE'RE GOING TO TALK MORE ABOUT THAT, THAT INVOLVED NEXT

02:38PM 1 GENERATION DEVICES.

02:38PM 2 YES, MEANING THE 4S AND THE MINILAB WERE NEXT GENERATION
02:38PM 3 DEVICES?

02:38PM 4 SO THEY'RE SHOWING WALGREENS NOT JUST WHAT WE'RE CURRENTLY
02:38PM 5 USING IN THE CLIA LAB BUT ALSO WHAT THE FUTURE OF THE COMPANY
02:38PM 6 IS, INCLUDING THE 4S DEVICE.

02:38PM 7 AND THERE'S NOTHING, NOTHING AT ALL THAT LIMITS THERANOS
02:39PM 8 WHEN THEY'RE TALKING TO INVESTORS OR TALKING TO WALGREENS THAT
02:39PM 9 THEY SOMEHOW HAVE TO LIMIT WHAT THEY'RE SHOWING PEOPLE. IT'S
02:39PM 10 JUST WHAT WE'RE OPERATING IN THE CLIA LAB AT THIS PARTICULAR
02:39PM 11 MOMENT. THEY'RE PERFECTLY ENTITLED TO SAY, WELL, THIS IS WHAT
02:39PM 12 WE HAVE IN NEXT GENERATION DEVICES, THIS IS WHAT WE'RE
02:39PM 13 PLANNING, THIS IS WHAT WE'RE GOING TO DO, THIS IS A DEVICE THAT
02:39PM 14 CAN RUN ALL OF THE DIFFERENT CATEGORIES OF BLOOD TESTING.

02:39PM 15 SO IT DOESN'T MATTER IF IT'S ACTUALLY OPERATING IN THE
02:39PM 16 CLIA LAB IN TERMS OF SHOWING PEOPLE, BECAUSE INVESTORS ARE
02:39PM 17 INVESTING FOR THE LONG TERM. WE HAVE HEARD FROM A NUMBER OF
02:39PM 18 INVESTORS, INCLUDING LISA PETERSON, THAT THIS WAS A LONG TERM
02:39PM 19 PARTNERSHIP THAT THEY WERE TALKING ABOUT.

02:39PM 20 SO OF COURSE IT WAS INTERESTING TO INVESTORS WHAT THE
02:39PM 21 COMPANY WOULD BE DOING. AFTER ALL, THE 4S WAS A DEVICE THAT
02:39PM 22 THE COMPANY GOT ITS FDA APPROVAL FOR. SO THIS WAS THE FUTURE
02:39PM 23 OF THE COMPANY.

02:39PM 24 LET'S GO TO THE NEXT SLIDE.

02:39PM 25 SO IN AUGUST OF 2013, MR. JHAVERI AND OTHER WALGREENS

02:40PM 1 EXECUTIVES CAME TO THERANOS AND THEY HAD A MEETING AND A TOUR,
02:40PM 2 BUT THEY ALSO HAD THEIR BLOOD TESTING DONE.

02:40PM 3 THE GOVERNMENT HAS TALKED ABOUT THAT DEMO, AND I WANT TO
02:40PM 4 SPEND A LITTLE TIME ON THAT.

02:40PM 5 SO, FIRST OF ALL, THE GOVERNMENT SHOWED YOU THIS EMAIL
02:40PM 6 ABOUT STARTING THE ADVIA RUN ON ALL SAMPLES.

02:40PM 7 AND THEY'RE TREATING THIS LIKE, WELL, MR. JHAVERI AND HIS
02:40PM 8 COLLEAGUES, YOU KNOW, CAME THERE TO GET A THERANOS BLOOD TEST
02:40PM 9 AND, IN FACT, THEIR SAMPLES ARE RUN ON AN ADVIA MACHINE, SO
02:40PM 10 THIS IS SOME KIND OF BAIT AND SWITCH WHERE THEY'RE ACTUALLY,
02:40PM 11 YOU KNOW, RUNNING ON THEIR COMMERCIAL DEVICE.

02:40PM 12 WHAT THE GOVERNMENT DIDN'T TELL YOU OR SHOW YOU IS THAT
02:40PM 13 ACTUALLY THE FINGERSTICK COLLECTION IS WHAT HAPPENED. SO IT
02:40PM 14 WASN'T A VENOUS DRAW, IT WAS A COLLECTION FROM THE FINGER.

02:40PM 15 SO YOU CAN'T RUN THE FINGERSTICK AS WE ALL KNOW NOW, WE
02:40PM 16 CAN'T RUN THAT FINGERSTICK ON A COMMERCIAL DEVICE THAT IS NOT
02:40PM 17 MODIFIED.

02:40PM 18 SO FAR THIS HAS TO BE A MODIFIED ADVIA. IT CAN'T BE A
02:41PM 19 STANDARD COMMERCIAL ADVIA. AND THAT WAS THE SUBJECT OF
02:41PM 20 THERANOS PATENT I SHOWED YOU EARLIER AND ALL OF THE
02:41PM 21 MODIFICATIONS THE SCIENTIFIC TEAM MADE TO ACHIEVE HIGH
02:41PM 22 THROUGHPUT PERFORMANCE RUNNING A LOT OF BLOOD SAMPLES BUT ALSO
02:41PM 23 JUST TO KEEP THE FINGERSTICK.

02:41PM 24 SO THIS WAS WHAT MR. EDLIN REPORTED ABOUT COLLECTING
02:41PM 25 FINGERSTICK SAMPLES. AND MR. JHAVERI CONFIRMED THAT. HE SAID

02:41PM 1 WHEN HE WENT THERE TO THERANOS IN MID-AUGUST OF 2013, HE HAD A
02:41PM 2 FINGERSTICK SAMPLE, NOT A VENOUS DRAW.

02:41PM 3 AND YOU CAN SEE IN MR. JHAVERI'S TESTIMONY, HE HAD A
02:41PM 4 FINGERSTICK, AND HE ALSO IS AWARE THAT AN OFF-THE-SHELF ADVIA
02:41PM 5 MACHINE IS NOT GOING TO BE ABLE TO DO FINGERSTICK TESTING.

02:41PM 6 MR. JHAVERI ALSO UNDERSTOOD FROM THIS DEMO IN AUGUST THAT
02:41PM 7 THE MACHINES IN THE ROOM -- AND JUST TO STEP BACK FOR A MINUTE.
02:41PM 8 THE GOVERNMENT HAS SAID, WELL, THERE ARE MACHINES IN THE ROOM
02:42PM 9 LIKE A 4S OR AN EDISON. AND SOMEHOW THE GOVERNMENT IS TRYING
02:42PM 10 TO CLAIM, WELL, THAT'S PART OF A FRAUDULENT SCHEME BECAUSE WHY
02:42PM 11 WOULD THERE BE MACHINES IN THE ROOM IF THEY'RE NOT ACTUALLY
02:42PM 12 USING THOSE PARTICULAR MACHINES FOR THE BLOOD TEST?

02:42PM 13 MR. JHAVERI KNEW THEY WEREN'T OPERATIONAL. IT WAS SIMPLY
02:42PM 14 TO SHOW US WHAT THOSE MACHINES WOULD LOOK LIKE, BOTH THE
02:42PM 15 CURRENT AND THE FUTURE OF THE COMPANY.

02:42PM 16 SO THIS WASN'T ANYTHING OTHER THAN, WELL, LET'S SHOW OUR
02:42PM 17 BUSINESS PARTNER EVERYTHING WE'RE TRYING TO DO HERE, AND AT
02:42PM 18 THAT TIME THEY WERE RUNNING TESTS ON MODIFIED ADVIA'S, SO IF
02:42PM 19 THEY TEST WALGREENS THAT WAY, THAT'S CONSISTENT WITH WHAT THEY
02:42PM 20 WERE DOING.

02:42PM 21 LET'S GO TO THE NEXT SLIDE.

02:42PM 22 SO MR. JHAVERI GOT LAB TEST RESULTS. AND YOU MIGHT
02:42PM 23 REMEMBER DURING HIS TESTIMONY, HE TESTIFIED THAT ALL OF THOSE
02:42PM 24 PATIENT RESULTS FIELDS THAT YOU ARE SEEING ON THE SCREEN WERE
02:42PM 25 ALL FILLED IN. AND THE COPY HE WAS LOOKING AT, WE REDACTED

02:42PM 1 THOSE PATIENT RESULTS JUST TO PROTECT MR. JHAVERI'S PRIVACY.
02:43PM 2 JUST LIKE ANY OTHER PERSON, HE'S ENTITLED TO NOT AIR HIS
02:43PM 3 PRIVATE HEALTH INFORMATION IN PUBLIC, SO AS A COURTESY THOSE
02:43PM 4 WERE REDACTED.

02:43PM 5 BUT HE TESTIFIED THAT EVERY SINGLE ONE OF THOSE RESULTS
02:43PM 6 WERE FILLED IN ON THIS FORM.

02:43PM 7 AND HE GOT THOSE RESULTS.

02:43PM 8 NOW, THERE WAS AN EMAIL SHOWN THAT DR. YOUNG WAS
02:43PM 9 CORRECTING SOME OF THOSE RESULTS. WHAT THAT EMAIL ACTUALLY
02:43PM 10 SAID WAS THAT HE CORRECTED RESULTS BECAUSE OF WHAT HE VIEWED AS
02:43PM 11 A BLOOD COLLECTION DEVICE, A BCD ISSUE. SO DR. YOUNG WAS THE
02:43PM 12 SCIENTIST. IF HE THOUGHT THERE WAS A COLLECTION ISSUE WITH ONE
02:43PM 13 OF THE TESTS AND IT HAS TO DO WITH ONE OF THE THYROID TESTS,
02:43PM 14 DR. YOUNG WAS THE ONE ENTITLED TO DO THAT. IT WASN'T
02:43PM 15 MR. BALWANI WHO WAS MAKING CORRECTIONS FOR THE RESULTS.

02:43PM 16 DR. YOUNG APPARENTLY PERCEIVED A BCD ISSUE AND HE
02:43PM 17 CORRECTED THE RESULT.

02:43PM 18 BUT HERE'S WHAT IS IMPORTANT. MR. JHAVERI GOT THESE
02:43PM 19 RESULTS, RIGHT? AND WHAT HAPPENED?

02:44PM 20 WELL, IT HAPPENED TO BE -- IT JUST SO HAPPENS THAT
02:44PM 21 MR. JHAVERI IS MARRIED TO A NURSE PRACTITIONER. HER NAME WAS
02:44PM 22 SAGE AND IT IS SAGE. AND THEY LOOKED AT THE RESULTS TOGETHER
02:44PM 23 WHEN HE GOT THE FINGERSTICK RESULTS FROM THE THERANOS MODIFIED
02:44PM 24 PREDICATES THAT THE GOVERNMENT SAYS ARE SO BAD.

02:44PM 25 THE RESULTS THAT THERANOS REPORTED WERE IDENTICAL TO THE

02:44PM 1 LAB TESTS THAT YOU HAD AT THE OTHER LAB.

02:44PM 2 MR. JHAVERI AGREED, YES, THEY WERE.

02:44PM 3 EVERY SINGLE ONE?

02:44PM 4 HE SAYS YES.

02:44PM 5 AND THEN I ASKED HIM THE QUESTION, TO YOUR KNOWLEDGE, DID
02:44PM 6 THERANOS HAVE ANY INFORMATION ABOUT WHAT THE RESULTS WERE FROM
02:44PM 7 THE OTHER LAB? IN OTHER WORDS, WAS THERE ANY CHANCE THAT
02:44PM 8 THERANOS COULD MANIPULATE THINGS SO THAT THEY CHANGED RESULTS
02:44PM 9 OR DID SOMETHING TO MAKE IT APPEAR THAT THE RESULTS WERE
02:44PM 10 IDENTICAL WHEN THEY REALLY WEREN'T?

02:44PM 11 AND MR. JHAVERI SAID, NO, HE DOESN'T BELIEVE SO.

02:44PM 12 SO THERANOS DIDN'T KNOW WHAT THE OTHER LAB RESULTS WERE.
02:44PM 13 THERANOS DID THE TEST, THE FINGERSTICK TEST, AND THEY REPORTED
02:45PM 14 THE RESULTS TO MR. JHAVERI, HE REVIEWED THEM WITH HIS LIFE WHO
02:45PM 15 WAS A NURSE PRACTITIONER, AND THEY WERE IDENTICAL.

02:45PM 16 SO YET ANOTHER INDICATION THAT WHEN THE GOVERNMENT SAYS
02:45PM 17 THE TEST DOESN'T WORK, WELL, THEY WORKED FOR MR. JHAVERI JUST
02:45PM 18 FINE, THESE FINGERSTICK TESTS.

02:45PM 19 THIS NEXT SLIDE IS ABOUT THE ISSUE THAT I WAS JUST
02:45PM 20 DISCUSSING WITH YOU, MR. EDLIN.

02:45PM 21 SO DR. YOUNG REVIEWED THE RESULTS, AND HE PARTICIPATED IN
02:45PM 22 THE DEMO PROCESS, AND HE ULTIMATELY REVIEWED AND APPROVED TEST
02:45PM 23 RESULTS?

02:45PM 24 MR. EDLIN SAID YES.

02:45PM 25 GO TO THE NEXT SLIDE.

02:45PM 1 OKAY. SO MR. EDLIN SAID -- QUESTION: THE GOAL OF THOSE
02:45PM 2 DEMONSTRATIONS WAS TO PRESENT AN HONEST PICTURE OF WHAT WAS
02:45PM 3 GOING ON?

02:45PM 4 MR. EDLIN SAID YES.

02:45PM 5 AND THE QUESTION PUT TO MR. EDLIN WAS, DID HE BELIEVE THAT
02:45PM 6 DANIEL YOUNG, IN DOING WHAT HE WAS DOING, WAS BEING DISHONEST
02:46PM 7 IN ANALYZING AND MAKING DECISIONS ABOUT THOSE TEST RESULTS,
02:46PM 8 INCLUDING THAT CORRECTION OF THE RESULTS FOR THE THYROID,
02:46PM 9 PARTICULAR THYROID TEST FOR MR. JHAVERI AND HIS COLLEAGUES?

02:46PM 10 AND MR. EDLIN SAID NO.

02:46PM 11 SO, AGAIN, IN REAL TIME, THIS IS WHAT MR. EDLIN, WHO WAS
02:46PM 12 DEEPLY INVOLVED WITH THESE DEMOS, THAT'S WHAT HE WAS
02:46PM 13 PERCEIVING. HE DIDN'T THINK HE WAS PART OF SOME SCHEME. HE
02:46PM 14 THOUGHT THEY WERE DEMOING THE TECHNOLOGY, WHAT IT WOULD BE,
02:46PM 15 WHAT IT WAS.

02:46PM 16 AND MR. JHAVERI AND HIS COLLEAGUES GOT THE TEST AND
02:46PM 17 MR. JHAVERI'S RESULTS WERE IDENTICAL.

02:46PM 18 OKAY. LET'S GO TO THE NEXT SLIDE.

02:46PM 19 AND THIS IS AN EARLIER DEMO IN CHICAGO FROM 2012. AND AS
02:46PM 20 YOU CAN SEE THIS IS AN EMAIL FROM MR. BALWANI. HE SAYS HE
02:46PM 21 HEARD BACK FROM THE EXECUTIVE ON WHOM WE HAD PERFORMED THE DEMO
02:46PM 22 ON JULY 16TH IN CHICAGO, AND HE SAID HIS RESULTS FROM THE
02:47PM 23 CENTRAL LAB, THAT HE HAD DID ON HIS DOCTOR'S ORDER, WERE
02:47PM 24 IDENTICAL TO THE RESULTS FROM OUR SYSTEM DURING THE DEMO.

02:47PM 25 AND MR. BALWANI SAYS, I HOPE THIS GIVES AN ADDITIONAL DOSE

02:47PM 1 OF CONFIDENCE (NOT THAT YOU NEEDED MORE OF IT) TO EVERYONE AS
02:47PM 2 THESE WERE DIFFICULT ASSAYS, INCLUDED VITAMIN D, VITAMIN
02:47PM 3 D(DIFFICULT) ."

02:47PM 4 BECAUSE I THINK AS WE SAW THROUGH DR. ROSENDORFF,
02:47PM 5 VITAMIN D WAS A PARTICULARLY DIFFICULT ASSAY. YOU MAY REMEMBER
02:47PM 6 THERE WAS TESTIMONY ABOUT A SCHOLARLY PAPER THAT TALKED ABOUT
02:47PM 7 VITAMIN D. IT WAS REFERENCED IN AN EMAIL AND IT WAS A
02:47PM 8 DIFFICULT ASSAY.

02:47PM 9 SO MR. BALWANI WAS AWARE THAT VITAMIN D WAS A DIFFICULT
02:47PM 10 ASSAY, BUT IT CAME OUT WELL, AND THIS GAVE MR. BALWANI
02:47PM 11 CONFIDENCE.

02:47PM 12 AND I TALKED BEFORE ABOUT ALL OF THOSE MARKERS THAT
02:47PM 13 MR. BALWANI HAD TO MAKE HIM BELIEVE THAT THE TECHNOLOGY WORKED,
02:47PM 14 THAT HE WAS CONFIDENT GOING FORWARD WITH PATIENT TESTING AND
02:47PM 15 TALKING TO INVESTORS. AND THIS WAS JUST ONE OF THOSE DATA
02:47PM 16 POINTS THAT MR. BALWANI HAD THAT THE TECHNOLOGY WAS WORKING
02:47PM 17 JUST FINE, AS HE HAD BEEN TOLD FOR MANY -- IN MANY OTHER WAYS
02:47PM 18 AND IN MANY OTHER SOURCES.

02:48PM 19 SAME THING WITH ONE OF BRIAN GROSSMAN'S COLLEAGUES. THIS
02:48PM 20 IS WITH REGARD TO A TEST THAT WAS CONDUCTED FOR A MAN NAMED
02:48PM 21 VIVEK KHANNA, WHO IS SOMEONE WHO WORKED FOR PFM WITH
02:48PM 22 BRIAN GROSSMAN. AND AGAIN, DR. YOUNG REPORTS THE RESULTS LOOK
02:48PM 23 FINE FOR THAT DEMONSTRATION.

02:48PM 24 THESE ARE MR. KHANNA'S RESULTS, OF COURSE, REDACTED.

02:48PM 25 AND YOU CAN SEE AT THE TOP THERANOS LAB REPORT TECHNOLOGY

02:48PM 1 DEMONSTRATION. THAT'S WHAT MR. JHAVERI'S RESULT SAID AS WELL.
02:48PM 2 SO THESE ARE NOT CLINICAL TESTS THAT ARE DESIGNED TO HAVE
02:48PM 3 PATIENTS MAKE DECISIONS ABOUT THEIR TECHNOLOGY DEMONSTRATIONS.

02:48PM 4 OKAY. LET ME TALK ABOUT AN EMAIL THAT THE GOVERNMENT
02:48PM 5 SHOWED YOU IN THEIR CLOSING REMARKS. THIS IS AN EMAIL FROM
02:48PM 6 CHRISTIAN HOLMES TO A GROUP OF PEOPLE, INCLUDING MR. BALWANI.

02:48PM 7 AND THIS IS AN EMAIL WHERE MR. HOLMES, CHRISTIAN HOLMES,
02:48PM 8 HAS A VERY SILLY IDEA. HE'S TALKING ABOUT A DEMO THAT IS GOING
02:49PM 9 TO BE SCHEDULED AT A WALGREENS WHERE A GROUP OF PEOPLE CALLED
02:49PM 10 BDT. THAT ACTUALLY STANDS FOR BYRON D. TROTT. YOU HEARD A
02:49PM 11 LITTLE BIT ABOUT HIM WHEN MS. PETERSON WAS ON THE STAND.

02:49PM 12 AND MR. TROTT OR PEOPLE FROM HIS OFFICE CAME TO DO A DEMO.
02:49PM 13 AND IN PREPARATION FOR THAT, THERE'S THIS EMAIL FROM
02:49PM 14 CHRISTIAN HOLMES. AND ONE OF THE THINGS THAT CHRISTIAN HOLMES
02:49PM 15 SAYS IS, OKAY, WE WANT THE PEOPLE TO GET THE FINGERSTICK
02:49PM 16 EXPERIENCE, BUT OBVIOUSLY EVERYBODY KNOWS AT WALGREENS IF YOU
02:49PM 17 GO IN THERE, YOU MIGHT GET A VENOUS DRAW FOR SOME OF THE TESTS
02:49PM 18 BECAUSE THAT IS PUBLICLY KNOWN.

02:49PM 19 BUT MR. HOLMES HAS A SILLY IDEA ABOUT LET'S SEE IF WE CAN
02:49PM 20 DISTRACT PEOPLE WHILE THEY GET THE RESULTS AND THEY DON'T
02:49PM 21 REALIZE THAT WE'VE REMOVED A TEST THAT WAS GOING TO BE ON
02:49PM 22 VENOUS.

02:49PM 23 WELL, THAT'S CHRISTIAN HOLMES SAYING THAT, NOT
02:50PM 24 MR. BALWANI. THERE'S NO EVIDENCE, NONE, THAT MR. BALWANI
02:50PM 25 CONDONED THAT, OR APPROVED IT, OR THOUGHT OF THAT.

02:50PM 1 HOW MANY TIMES -- LET'S USE OUR COMMON SENSE HERE. HOW
02:50PM 2 MANY TIMES HAVE YOU HAD A BUSINESS MEETING OR A MEETING WITH
02:50PM 3 FAMILY AND SOMEONE SAYS SOMETHING THAT MAYBE A LITTLE DUMB OR
02:50PM 4 UNENLIGHTENED, OR YOU THINK MIGHT EVEN BE LIKE PROBLEMATIC,
02:50PM 5 RIGHT?

02:50PM 6 AND JUST BECAUSE THAT SOMEONE SAYS THAT, DOESN'T MEAN YOU
02:50PM 7 ENDORSE IT OR YOU DO IT.

02:50PM 8 AND HERE'S THE THING ABOUT THIS, IF THIS HAPPENED, IF
02:50PM 9 THERE WAS SOME EFFORT TO DISTRACT THESE POTENTIAL INVESTORS AT
02:50PM 10 A WALGREENS STORE, THE GOVERNMENT COULD HAVE CALLED BDT, OR
02:50PM 11 ANYONE WHO WAS INVOLVED IN THIS DEMO, CHRISTIAN HOLMES, OR THE
02:50PM 12 PEOPLE WHO HAD THE DEMO AND ASK THEM IF THIS IS WHAT HAPPENED
02:50PM 13 IF THEY WERE DISTRACTED. WE HEARD NOTHING ABOUT THAT.

02:50PM 14 THE GOVERNMENT'S ARGUMENT ON CLOSING WAS THAT, WELL, THE
02:50PM 15 SIGNIFICANCE OF THIS IS THAT CHRISTIAN HOLMES APPARENTLY FELT
02:50PM 16 COMFORTABLE TO AIR THIS SILLY IDERE IN AN AUDIENCE OF
02:50PM 17 MR. BALWANI AND OTHERS, SO, THEREFORE, HE MUST BE COMFORTABLE
02:51PM 18 TALKING ABOUT DECEPTIVE THINGS, THEREFORE, SOMEHOW THIS STICKS
02:51PM 19 TO MR. BALWANI.

02:51PM 20 WHAT CHRISTIAN HOLMES IS THINKING AND WHAT HE THINKS IS A
02:51PM 21 GOOD IDEA AT THE TIME THAT THERE'S NO EVIDENCE THAT THAT WAS
02:51PM 22 EVER CARRIED OUT, THAT'S NOT EVIDENCE OF MR. BALWANI'S INTENT
02:51PM 23 TO DEFRAUD OR MR. BALWANI'S KNOWLEDGE OF ANYTHING.

02:51PM 24 AND CHRISTIAN HOLMES IS NOT ON TRIAL HERE, MR. BALWANI IS.
02:51PM 25 AND HE DID NOT WRITE THIS EMAIL, HE DID NOT APPROVE THIS, HE

02:51PM 1 DID NOT CONDONE IT. THERE'S NO EVIDENCE ABOUT THIS WHATSOEVER.
02:51PM 2 THIS IS MEANINGLESS. IT'S JUST A SILLY IDEA THAT THIS PERSON
02:51PM 3 HAD, CHRISTIAN HOLMES, WHO YOU HAVE NOT HEARD FROM.

02:51PM 4 LET'S TALK ABOUT THIS OTHER ASPECT OF THE DEMOS THAT THE
02:51PM 5 GOVERNMENT HAS POINTED TO AS SOMEHOW DECEPTIVE, AND THAT'S WHAT
02:51PM 6 IS KNOWN AS THE NULL PROTOCOL.

02:51PM 7 SO THIS WAS A QUESTION PUT TO MR. EDLIN ON DIRECT
02:51PM 8 EXAMINATION.

02:51PM 9 QUESTION: SO LET'S IMAGINE THAT WE'RE IN THE CONFERENCE
02:51PM 10 ROOM, THE DEVICE IS THERE, IT'S SET UP TO RUN THIS NULL
02:52PM 11 PROTOCOL.

02:52PM 12 IF A SAMPLE IS PUT INTO THE MACHINE, THEN CAN YOU DESCRIBE
02:52PM 13 WHAT THE VISITOR WOULD SEE OR WHAT WOULD WE SEE IN THAT CASE?

02:52PM 14 AND THEN MR. EDLIN ANSWERS THE QUESTION.

02:52PM 15 THE PREMISE OF THE HYPOTHETICAL, THAT A SAMPLE IS PUT INTO
02:52PM 16 THE DEVICE, AND THEN THIS NULL PROTOCOL IS RUNNING ON THE
02:52PM 17 THERANOS DEVICE. THIS IS THE SORT OF IMPRESSION THAT THE
02:52PM 18 GOVERNMENT WANTS TO LEAVE YOU WITH, THAT THERE IS KIND OF
02:52PM 19 FAKERY GOING ON. THAT AT THESE DEMOS, THERE'S A FINGERSTICK
02:52PM 20 SAMPLE TAKEN FROM THE INVESTOR, OR WHOEVER IT IS DOING THE
02:52PM 21 DEMO.

02:52PM 22 AND THAT THERE'S SOME BIG SHOW OF TAKING THE SAMPLE, AND
02:52PM 23 PUTTING IT IN THE CARTRIDGE, AND THEN PUTTING THE CARTRIDGE
02:52PM 24 INTO THE MACHINE, AND RUNNING THE MACHINE, AND HAVING IT WHIRL
02:52PM 25 AWAY AS IF IT'S REALLY RUNNING THE SAMPLE, BUT REALLY SECRETLY

02:52PM 1 THERE'S THIS THING CALLED THE NULL PROTOCOL THAT IS RUNNING AND
02:53PM 2 IT'S DESIGNED TO HIDE ANY ERROR THAT, FROM THE GOVERNMENT'S
02:53PM 3 STANDPOINT, INEVITABLY THE MACHINE IS GOING TO, I DON'T KNOW,
02:53PM 4 BURST INTO CLAIMS OR SOMETHING OR AT LEAST SHOW AN ERROR CODE.
02:53PM 5 AND IN ORDER TO HIDE ALL OF THAT, THERE'S GOING TO BE THIS NULL
02:53PM 6 PROTOCOL. AND THE INVESTOR THINKS IT'S RUNNING FINE. BUT IT'S
02:53PM 7 REALLY NOT.

02:53PM 8 THAT'S THE GOVERNMENT'S THEORY IT SEEMS LIKE, AND THAT'S
02:53PM 9 THE IMPRESSION THEY WANT TO LEAVE YOU. THAT'S NOT WHAT
02:53PM 10 HAPPENED.

02:53PM 11 THAT WHOLE HYPOTHETICAL, THAT WHOLE SCENARIO DEPENDS ON
02:53PM 12 THIS SAMPLE BEING PUT INTO THE MACHINE AND MAKING THE INVESTOR
02:53PM 13 OR THE VIP WHO IS DOING -- PARTICIPATING IN THIS DEMO THINK
02:53PM 14 THAT THEIR BLOOD SAMPLE IS REALLY RUNNING. BUT THAT'S NOT WHAT
02:53PM 15 IS HAPPENING.

02:53PM 16 LET'S GO TO THE NEXT.

02:53PM 17 SO THEN ON CROSS MR. EDLIN IS ASKED, IT WAS YOUR
02:53PM 18 EXPERIENCE AT THERANOS, WASN'T IT, THAT IF THE NULL PROTOCOL
02:53PM 19 WAS RUNNING ON THE MACHINE, A BLOOD SAMPLE WAS NOT PUT IN THAT
02:53PM 20 MACHINE; IS THAT CORRECT?

02:53PM 21 THAT'S CORRECT.

02:53PM 22 SO IT'S NOT BEING PUT IN THE MACHINE. THE NULL PROTOCOL
02:53PM 23 IS A WAY OF RUNNING THE MACHINE WITHOUT PUTTING THE SAMPLE IN.
02:53PM 24 AND SOMETIMES PEOPLE JUST WANTED TO SEE WHAT THE HARDWARE WAS
02:54PM 25 LIKE. AND THEY WEREN'T, AS MR. EDLIN SAID AND I POINTED OUT

02:54PM 1 EARLIER, SOMETIMES PEOPLE DIDN'T WANT THEIR BLOOD SAMPLE TAKEN.

02:54PM 2 SO THE IDEA THAT THE NULL PROTOCOL IS SOMETHING NEFARIOUS

02:54PM 3 IS JUST NOT TRUE. AND THE HYPOTHETICAL THAT WAS PUT TO

02:54PM 4 MR. EDLIN ABOUT RUNNING A SAMPLE IS JUST NOT WHAT IS GOING ON.

02:54PM 5 THERE IS NO SAMPLE. THERE IS NO SHOW OF RUNNING A SAMPLE AND

02:54PM 6 HAVING THIS NULL PROTOCOL HIDE ERRORS. THERE IS NO SAMPLE.

02:54PM 7 THOSE ARE THE FACTS.

02:54PM 8 IN FACT, TO GO FURTHER ON THAT POINT, THE INTELLECTUAL

02:54PM 9 PROPERTY WAS USED INTERNALLY FOR SOME PURPOSES, AND IT HAD

02:54PM 10 NOTHING TO DO WITH INVESTORS.

02:54PM 11 SO IN THIS EMAIL MR. EDLIN WRITES TO DR. YOUNG, "HI

02:54PM 12 DANIEL,

02:54PM 13 "SUNNY WOULD LIKE TO START STRESS TESTING THE DEPARTMENT

02:54PM 14 OF DEFENSE APP ON THE 4S NEXT MONDAY -- WILL YOU BE ABLE TO

02:54PM 15 PROVIDE A DUMMY CARTRIDGE FOR THE TESTING?"

02:55PM 16 AND THE RESPONSE FROM MR. EDLIN, "INITIALLY WE ONLY HAVE

02:55PM 17 TO RUN A NULL PROTOCOL."

02:55PM 18 SO THIS IS JUST INTERNAL TESTING. IT'S NOT DEMOS FOR

02:55PM 19 INVESTORS OR ANYTHING LIKE THAT. SO EVEN INTERNALLY THEY'RE

02:55PM 20 RUNNING THE NULL PROTOCOL WHEN THEY JUST WANT TO RUN THE

02:55PM 21 HARDWARE WITHOUT DOING A BLOOD SAMPLE. THAT'S ALL IT IS, AND

02:55PM 22 THAT'S WHAT THE EVIDENCE SHOWS.

02:55PM 23 GO TO THE NEXT SLIDE.

02:55PM 24 THE QUESTION WAS PUT TO MR. EDLIN, AND THERE WAS NOTHING

02:55PM 25 OR YOU DIDN'T BELIEVE YOU WERE DOING ANYTHING NEFARIOUS IN

02:55PM 1 RUNNING THESE DEMOS USING THE DEMO APP OR THE NULL PROTOCOL,
02:55PM 2 DID YOU?

02:55PM 3 THE ANSWER IS NO.

02:55PM 4 YOU WEREN'T TRYING TO TRICK ANYONE?

02:55PM 5 RIGHT.

02:55PM 6 AND YOU HAD NO REASON TO BELIEVE AT THE TIME THAT ANYONE
02:55PM 7 ELSE AT THERANOS WAS DOING THAT; RIGHT?

02:55PM 8 RIGHT.

02:55PM 9 AND HE WAS THE PERSON, MR. EDLIN, WHO WAS DEEPLY INVOLVED
02:55PM 10 WITH THE DEMOS, AND HE KNEW WHAT THE NULL PROTOCOL WAS AND WHAT
02:55PM 11 IT WASN'T. HE'S NOT THINKING HE'S DECEIVING ANYBODY.

02:56PM 12 OKAY. LET'S GO TO ANOTHER TOPIC THAT THE GOVERNMENT HAS
02:56PM 13 POINTED OUT, AND THIS IS THE THERANOS WEBSITE. AND YOU HAVE
02:56PM 14 HEARD SOMETHING ABOUT THIS WHERE ACCORDING TO THE GOVERNMENT,
02:56PM 15 LAWYERS WERE INVOLVED IN ADVISING ABOUT THE WEBSITE, AND THEY
02:56PM 16 HAD CERTAIN CHANGES THAT THEY WANTED MADE, THE LAWYERS, RIGHT?

02:56PM 17 SO THE FIRST THING IS THAT IF YOU'RE GOING TO RUN A
02:56PM 18 FRAUDULENT SCHEME AND YOU'RE GOING TO PUT OUT A BUNCH OF FALSE
02:56PM 19 STATEMENTS ON YOUR WEBSITE, WHY HAVE LAWYERS AT ALL? WHY GO
02:56PM 20 THROUGH THE EXERCISE OF HAVING THEM LOOK AT IT?

02:56PM 21 WELL, THE REASON IS THAT THEY WERE SERIOUS ABOUT TAKING
02:56PM 22 THE ADVICE.

02:56PM 23 SO HERE'S WHAT HAPPENED. IF YOU LOOK AT THESE EXHIBITS --
02:56PM 24 IF YOU WANT TO WRITE THESE DOWN, 3965, 3981, AND 5805 -- WHAT
02:56PM 25 YOU WILL SEE IS THAT THERE WERE 49 CHANGES TO THE WEBSITE IN

02:56PM 1 RESPONSE TO THE ATTORNEY FEEDBACK. SO A GREAT MANY CHANGES
02:56PM 2 WERE MADE BASED ON THE LAWYER'S ADVICE. AND THERE WERE FOUR
02:56PM 3 ATTORNEYS FROM INSIDE THERANOS AND TWO LAW FIRMS PROVIDING THE
02:56PM 4 FEEDBACK.

02:56PM 5 AND THERE'S NOT ANY EVIDENCE THAT IT WAS MR. BALWANI WHO
02:57PM 6 WAS PERSONALLY TRYING TO MAKE THESE CHANGES. SO WHAT HAPPENS?

02:57PM 7 THIS IS JUST A FEW EXAMPLES. SO THE GOVERNMENT HAS
02:57PM 8 PARTICULARLY FOCUSSED ON THIS "HIGHEST LEVELS OF ACCURACY"
02:57PM 9 STATEMENT. AND HERE ARE EXAMPLES OF WHEN THOSE WERE CHANGED.

02:57PM 10 SO, FOR EXAMPLE, THERE WAS DRAFT WEBSITE LANGUAGE. AND
02:57PM 11 THESE ARE THOSE SAME EXHIBITS IF YOU WANT TO LOOK AT THOSE
02:57PM 12 DURING DELIBERATIONS. DRAFT WEBSITE LANGUAGE WAS "HIGHEST
02:57PM 13 LEVELS OF ACCURACY," THAT WAS REPLACED -- THE ATTORNEY ADVICE
02:57PM 14 RATHER WAS TO REPLACE IT WITH "HIGH LEVELS OF ACCURACY." AND
02:57PM 15 THEN THE FINAL WEBSITE IS "HIGH LEVELS OF PRECISION," THAT'S IN
02:57PM 16 THE HEADER OF THE DOCUMENT.

02:57PM 17 THERE WAS DRAFT WEBSITE LANGUAGE ABOUT "HIGHEST LEVELS OF
02:57PM 18 ACCURACY," AND THE LAWYERS -- THE DRAFT WAS "HIGHEST LEVELS OF
02:57PM 19 ACCURACY." THE ATTORNEY ADVICE WAS REPLACE THAT WITH "HIGH
02:58PM 20 LEVELS OF ACCURACY." AND THEN THE FINAL WEBSITE LANGUAGE WAS
02:58PM 21 IN THE TEXT "HIGH LEVELS OF PRECISION."

02:58PM 22 AND THEN ANOTHER EXAMPLE "A TINY DROP IS ALL IT TAKES,"
02:58PM 23 AND THEN THE ATTORNEY'S ADVICE WAS REVISE "ONE TINY DROP" TO "A
02:58PM 24 FEW DROPS IS ALL IT TAKES." AND THEN THAT CHANGE WAS MADE. SO
02:58PM 25 THOSE ARE AMONG THE 49 CHANGES THAT WERE MADE.

02:58PM 1 NOW, IT IS TRUE THAT IF YOU GO TO THE EXHIBIT, THERE WERE
02:58PM 2 CERTAIN PLACES WHERE THE CHANGE ISN'T MADE. BUT THE FACT THAT
02:58PM 3 PEOPLE ACTUALLY FIXING THE WEBSITE DIDN'T CATCH ALL OF THE
02:58PM 4 PLACES, ALL OF THE CHANGES, IS NOT INDICATIVE OF MR. BALWANI'S
02:58PM 5 FRAUD. THEY HAD LAWYERS, THEY FOLLOWED THE ADVICE MADE MANY
02:58PM 6 TIMES OVER. SO THAT'S THE ISSUE WITH THE WEBSITE.

02:58PM 7 AND THEN IF YOU GO TO THE NEXT ONE, MR. EDLIN TESTIFIED
02:58PM 8 THAT THERE WERE MEETINGS WITH THE LAWYERS ABOUT THE MARKETING
02:59PM 9 MATERIALS AND THE WEBSITE.

02:59PM 10 SO IT'S NOT JUST THE EMAIL THAT YOU SAW WHERE THE
02:59PM 11 ATTORNEYS GAVE ADVICE IN THE EMAIL FORM. THERE ARE ALSO
02:59PM 12 MEETINGS ABOUT THE MARKETING MATERIALS IN THE WEBSITE ABOUT THE
02:59PM 13 LAWYERS. WE DON'T KNOW WHAT WAS SAID IN THE MEETINGS, WHAT
02:59PM 14 DISCUSSIONS OCCURRED THAT WAS APPROPRIATE OR NOT APPROPRIATE ON
02:59PM 15 THE WEBSITE. WE JUST DON'T HAVE THAT INFORMATION. BUT WE KNOW
02:59PM 16 THERE WERE SUCH MEETINGS.

02:59PM 17 ANOTHER AREA WHERE THE GOVERNMENT HAS CLAIMED THERE WAS A
02:59PM 18 PROBLEM WAS THE WALGREENS BROCHURE.

02:59PM 19 AND THEY SHOWED YOU A PARTICULAR DOCUMENT THAT WAS THE
02:59PM 20 WALGREENS BROCHURE, BUT THAT -- AND THEY'RE CLAIMING THIS WAS
02:59PM 21 AN EXAMPLE OF SOMETHING THAT PATIENTS WOULD HAVE HAD THAT WAS
02:59PM 22 MISLEADING BECAUSE IT HAD THINGS THAT THE GOVERNMENT CLAIMS
02:59PM 23 WEREN'T CORRECT.

02:59PM 24 WELL, LET'S LOOK AT WHAT MR. EDLIN SAID ABOUT THAT.

02:59PM 25 SO THE DOCUMENT THAT THE GOVERNMENT PUT INTO EVIDENCE

02:59PM 1 MR. EDLIN SAID IS A MECHANICAL FOR THE BROCHURE.

02:59PM 2 AND THE QUESTION WAS, WHAT DOES THAT MEAN, A MECHANICAL?

02:59PM 3 AND HE SAYS IT'S ESSENTIALLY A DRAFT OF THE BROCHURE

03:00PM 4 BEFORE IT GETS PRINTED.

03:00PM 5 SO THE ONLY THING IN EVIDENCE IS A DRAFT. THE GOVERNMENT

03:00PM 6 DID NOT SHOW YOU WHAT THE FINAL BROCHURE LOOKED LIKE. THAT'S

03:00PM 7 NOT IN EVIDENCE.

03:00PM 8 SO TO TALK ABOUT A DRAFT WHEN YOU DON'T KNOW WHAT THE

03:00PM 9 FINAL WAS, I DON'T KNOW THAT THAT MAKES SENSE. IT DOESN'T SEEM

03:00PM 10 LIKE THE LEVEL OF PROOF YOU NEED TO FIND BEYOND A REASONABLE

03:00PM 11 DOUBT THAT THIS WAS PART OF THE FRAUDULENT SCHEME.

03:00PM 12 LET'S TALK ABOUT THE MARKETING MATERIALS THAT INCLUDES THE

03:00PM 13 INVESTOR POWERPOINT SLIDES THAT YOU HAVE SEEN.

03:00PM 14 IF WE CAN GO TO THE NEXT SLIDE.

03:00PM 15 SO THE ORIGIN OF THIS SLIDE DECK THAT YOU HAVE SEEN IN THE

03:00PM 16 CASE OF THE INVESTORS IS THE MARKETING WITH CHIAT/DAY. THIS IS

03:00PM 17 THE MARKETING FIRM THAT THERANOS HAD WORKING WITH THEM. THAT

03:00PM 18 RELATIONSHIP ACTUALLY BEGAN IN 2012 ACCORDING TO MR. EDLIN. HE

03:00PM 19 SAID THAT SOUNDED REASONABLE AT LEAST.

03:00PM 20 AND HE KNOWS THERE WAS A RELATIONSHIP WITH CHIAT/DAY

03:00PM 21 BEFORE THE WALGREENS LAUNCH.

03:01PM 22 IF WE CAN GO TO THE NEXT SLIDE.

03:01PM 23 AND THIS IS THE CHIAT/DAY DOCUMENT THAT SHOWS WHAT THE

03:01PM 24 SO-CALLED DELIVERABLES WERE, IN OTHER WORDS, THE WORK PRODUCT

03:01PM 25 THAT THEY WERE GOING TO PUT OUT.

03:01PM 1 AND I HIGHLIGHTED THE PHYSICIAN SALES SLIDE DECK AND LEAVE
03:01PM 2 BEHINDS, AND THAT IS BECAUSE EVERYTHING THAT OUR SALESPEOPLE
03:01PM 3 WILL NEED TO BE EFFECTIVE IN A PHYSICIAN OFFICE TO COMMUNICATE
03:01PM 4 OUR VALUE PROPOSITION. THAT'S FROM DECEMBER OF 2012.

03:01PM 5 WE'LL SEE THIS TESTIMONY IN A MINUTE -- IN FACT, LET'S GO
03:01PM 6 TO IT RIGHT NOW. THE NEXT SLIDE.

03:01PM 7 SO, MS. PETERSON, THIS IS ONE OF THE SLIDES, AND THE
03:01PM 8 HEADING OF THE SLIDE IS "EVERY THERANOS TEST BEGINS WITH YOU,
03:01PM 9 THE PHYSICIAN."

03:01PM 10 AND I ASKED HER, A SLIDE THAT SAYS -- WITH THAT HEADING
03:01PM 11 THE WAY IT'S WRITTEN, IT SEEMS TO BE DIRECTED TO AN AUDIENCE OF
03:01PM 12 PHYSICIANS.

03:01PM 13 SHE SAID RIGHT, BECAUSE THIS WAS A MARKETING MATERIAL THAT
03:01PM 14 CHIAT/DAY DEVELOPED. SO WHAT THESE SLIDES WERE IS A HODGEPODGE
03:01PM 15 OF ALL KINDS OF THINGS THAT WERE DEVELOPED FOR MARKETING
03:02PM 16 PURPOSES WITH CHIAT/DAY WELL BEFORE THE WALGREENS LAUNCH AND
03:02PM 17 BEFORE THERANOS WAS DOING THAT TESTING WITH WALGREENS.

03:02PM 18 AND THEY WERE JUST THIS HODGEPODGE OF MATERIALS SHOWING
03:02PM 19 INVESTORS, HERE'S WHAT OUR COMPANY IS OR COULD BECOME.

03:02PM 20 LET'S GO TO THE NEXT SLIDE.

03:02PM 21 MR. EDLIN TESTIFIED THAT THE PURPOSE OF THIS MEETING OR
03:02PM 22 THESE MEETINGS WAS TO DEVELOP MATERIALS ABOUT WHAT THERANOS,
03:02PM 23 THE GOALS THAT THERANOS WAS TRYING TO ACHIEVE. THOSE WERE THE
03:02PM 24 ORIGINS OF THESE SLIDES.

03:02PM 25 AND WHEN THESE SLIDE DECKS CAME IN FRONT OF INVESTORS,

03:02PM 1 THEY WERE SLIDES, AS YOU MIGHT REMEMBER, THAT HAD ALL KINDS OF
03:02PM 2 PRESENT TENSE STATEMENTS THAT OBVIOUSLY EVERYONE KNEW WASN'T
03:02PM 3 TRUE, HAVING THE LARGEST LAB IN THE COUNTRY AND HAVING THE
03:02PM 4 LARGEST FOOTPRINT IN CALIFORNIA. THE INVESTORS TESTIFIED THAT
03:02PM 5 THEY KNEW THOSE THINGS WERE NOT PRESENTLY TRUE, THOSE WERE
03:02PM 6 GOALS.

03:02PM 7 SO THE SLIDE DECK HAS A MIX OF THINGS OF WHAT IS GOING ON
03:02PM 8 NOW, WHAT IS GOING TO BE IN THE FUTURE. I MEAN, YOU REALLY
03:02PM 9 CAN'T KNOW MUCH ABOUT THESE SLIDE DECKS WITHOUT KNOWING EXACTLY
03:02PM 10 WHAT THE NARRATIVE WAS, WHAT THE VOICEOVER WAS BECAUSE THESE
03:03PM 11 SLIDE DECKS WERE NOT PRESENTED IN A VACUUM. THEY WERE MEETINGS
03:03PM 12 WITH THESE INVESTORS.

03:03PM 13 SO THE IDEA THAT THESE SLIDE DECKS ARE SOMEHOW, YOU KNOW,
03:03PM 14 LITERAL AND IT'S ONLY ABOUT WHAT IS GOING ON IN THE CLIA LAB AT
03:03PM 15 THE MOMENT, THAT'S NOT THE CASE. THESE INVESTORS WERE IN
03:03PM 16 LONG-TERM PARTNERSHIPS WITH THERANOS. THEY WERE INTERESTED IN
03:03PM 17 NOT ONLY WHAT THERANOS WAS DOING NOW, BUT WHAT THEY WERE GOING
03:03PM 18 TO BE DOING IN THE FUTURE. AND THAT'S WHAT THESE SLIDE DECKS
03:03PM 19 WERE AND MANY OF THESE SLIDES WERE CLEAR TO INVESTORS THAT THEY
03:03PM 20 WERE FUTURE FORWARD LOOKING STATEMENTS.

03:03PM 21 OKAY. LET'S TALK ABOUT THE MEDIA AND COMMUNICATIONS WITH
03:03PM 22 JOURNALISTS. IT'S ANOTHER TOPIC THE GOVERNMENT HAS RAISED, AND
03:03PM 23 THE GOVERNMENT'S THEORY, AS YOU'VE HEARD, IS THAT EVEN THOUGH
03:03PM 24 THE ARTICLES THAT THEY HAVE SHOWN YOU ARE THE JOURNALIST'S
03:03PM 25 WORDS, NOT MR. BALWANI, AND MR. BALWANI IS SOMEHOW RESPONSIBLE

03:04PM 1 FOR THAT, TOO, BECAUSE HE WAS AWARE THAT THESE MATERIALS WERE
03:04PM 2 IN THE HANDS OF INVESTORS.

03:04PM 3 SO LET'S START WITH THE -- WHAT IS KNOWN AS THE RAGO
03:04PM 4 ARTICLE, IT'S "THE WALL STREET JOURNAL" ARTICLE FROM SEPTEMBER
03:04PM 5 2013.

03:04PM 6 AND MR. LUCAS WAS SHOWN THAT. YOU CAN SEE THE LANGUAGE,
03:04PM 7 "THE SECRET THAT HUNDREDS OF EMPLOYEES ARE NOW REFINING
03:04PM 8 INVOLVES DEVICES THAT AUTOMATE AND MINIATURIZE MORE THAN 1,000
03:04PM 9 LABORATORY TESTS, FROM ROUTINE BLOOD WORK TO ADVANCED GENETIC
03:04PM 10 ANALYSIS."

03:04PM 11 THAT'S A TRUE STATEMENT. MR. RAGO CHOSE THE WORD
03:04PM 12 "REFINING." AND YOU COULD USE THE WORD "DEVELOPING." THERANOS
03:04PM 13 WAS WORKING ON THAT IN THEIR RESEARCH AND DEVELOPMENT. AND
03:04PM 14 WE'LL SEE THERE'S A LOT OF RESEARCH AND DEVELOPMENT EXPENDITURE
03:04PM 15 BEHIND WHAT THERANOS IS DOING.

03:04PM 16 BUT LET'S TALK ABOUT MR. LUCAS, HIS TESTIMONY. HE'S ASKED
03:04PM 17 A QUESTION ON DIRECT EXAMINATION BY THE GOVERNMENT.

03:04PM 18 WAS THE INFORMATION IN THIS ARTICLE CONSISTENT WITH
03:04PM 19 MR. LUCAS'S UNDERSTANDING OF WHAT THE TECHNOLOGY COULD DO BASED
03:05PM 20 ON CONVERSATIONS WITH MS. HOLMES?

03:05PM 21 AND MR. LUCAS SAYS, THAT CERTAINLY WAS THE HOPE THAT AT
03:05PM 22 SOME TIME IT WOULD DO ALL OF THE TESTS.

03:05PM 23 AND MR. LUCAS GOES ON. I DID NOT BELIEVE AT THE TIME
03:05PM 24 THAT -- YOU KNOW, THIS IS MORE OF A MARKETING. I CANNOT
03:05PM 25 BELIEVE AT THE TIME THAT THE COMPANY COULD DO MORE THAN ONE

03:05PM

1

THOUSAND TESTS.

03:05PM

2

SO MR. LUCAS, AN INVESTOR, RECOGNIZES THIS FOR WHAT IT IS.

03:05PM

3

IT'S JOURNALIST'S WORDS AND HE'S NOT PUTTING MUCH STOCK IN

03:05PM

4

THAT.

03:05PM

5

LET'S TALK ABOUT ROGER PARLOFF. HE WAS THE WRITER FROM

03:05PM

6

"FORTUNE" MAGAZINE AND THAT CAME OUT IN JULY OF 2014. THIS

03:05PM

7

EMAIL THAT I'M SHOWING YOU FROM MAY OF 2014 IS THE WORK THAT

03:05PM

8

THERANOS IS DOING TO GET MR. PARLOFF INFORMATION FOR HIS

03:05PM

9

ARTICLE.

03:05PM

10

NOW, THE DATE IS IMPORTANT HERE BECAUSE LET'S GO BACK TO

03:05PM

11

MR. PANDORI FOR A MINUTE. DR. PANDORI CLAIMS THAT HE HAD A

03:06PM

12

MEETING WITH MS. HOLMES AND MR. BALWANI AROUND MAY 19TH OF

03:06PM

13

2014, AND REMEMBER HE SAID I KNOW THAT BECAUSE IT WAS AROUND

03:06PM

14

HIS BIRTHDAY.

03:06PM

15

HE CLAIMED YOU'VE GOT TO INVOLVE THE SCIENTIFIC TEAM WITH

03:06PM

16

THE DISCUSSIONS WITH JOURNALISTS OR THE INFORMATION PRESENTED

03:06PM

17

TO JOURNALISTS BECAUSE WE WANT TO MAKE SURE IT'S ACCURATE, AND

03:06PM

18

HE CLAIMS THAT MR. BALWANI SAID THAT'S NEVER GOING TO HAPPEN

03:06PM

19

AND DR. PANDORI SAID HE QUIT FIVE MINUTES LATER.

03:06PM

20

AND WE ALREADY WENT THROUGH DR. PANDORI AND WHY THAT CAN'T

03:06PM

21

BE TRUE, BUT THIS IS ANOTHER PIECE OF THAT.

03:06PM

22

SO ON MAY 27TH, 2014, DR. PANDORI IS STILL AT THE COMPANY.

03:06PM

23

HE DOESN'T LEAVE FOR ANOTHER THREE DAYS.

03:06PM

24

AND THIS IS THE TEAM, NOT MR. BALWANI, HE'S NOT ON THIS,

03:06PM

25

AND AS YOU'LL SEE, HE'S NOT ASSIGNED ANY ACTION ITEMS FROM

03:06PM

1

MR. PARLOFF.

03:06PM

2

BUT THIS IS THE TEAM BEING ASSIGNED TASKS TO GET THE

03:06PM

3

JOURNALIST, MR. PARLOFF, INFORMATION FOR HIS ARTICLE, WHICH

03:06PM

4

ENDS UP COMING OUT A COUPLE MONTHS LATER.

03:07PM

5

SO LET'S TALK ABOUT OUR ACTION ITEMS, SHOWING THE REFLEX

03:07PM

6

TESTING CONFIGURATION WE WILL RELEASE IN THE FUTURE/ALL FUTURE

03:07PM

7

FEATURES, THAT'S A TASK ASSIGNED TO DANIEL YOUNG. YOU CAN SEE

03:07PM

8

THERE ARE OTHER TASKS ASSIGNED TO DR. YOUNG.

03:07PM

9

POINT 8 THERE, DATA ON ANY COMBINATION OF TESTS BEING ABLE

03:07PM

10

TO BE DONE ON OUR FRAMEWORK, ALSO ASSIGNED TO DANIEL YOUNG.

03:07PM

11

LAB REPORT SHOWING TRENDING DATA, I BELIEVE THAT'S TO JEFF

03:07PM

12

AND DANIEL YOUNG.

03:07PM

13

NUMBER 1, FOLLOW UP ON ALL OF OUR STATE CERTIFICATIONS.

03:07PM

14

THAT'S ASSIGNED TO ADAM, MEANING DR. ROSENDORFF, MARK,

03:07PM

15

DR. PANDORI HIMSELF, AND IT LOOKS LIKE BRAD, WHICH IS PROBABLY

03:07PM

16

BRAD ARINGTON, WHO IS A LAWYER AT THERANOS.

03:07PM

17

SO IT LOOKS LIKE DR. PANDORI, NOT WITHSTANDING HIS

03:08PM

18

TESTIMONY THAT HE WAS TOLD NEVER GOING TO HAPPEN AND NEVER

03:08PM

19

GOING TO INVOLVE SCIENTIFIC TEAM IN ANY INFORMATION THAT YOU'RE

03:08PM

20

GIVING TO JOURNALISTS, HE IS INVOLVED. HE IS INVOLVED A FEW

03:08PM

21

DAYS LATER, AS IS DR. YOUNG.

03:08PM

22

SO ANOTHER REASON WHY DR. PANDORI'S TESTIMONY IS JUST

03:08PM

23

COMPLETELY FALSE ON THAT SCORE AND MANY OTHER SCORES.

03:08PM

24

BUT THIS IS INFORMATION THAT THE TEAM, NOT MR. BALWANI, IS

03:08PM

25

GATHERING FOR THE JOURNALISTS AND AS YOU CAN SEE MR. BALWANI IS

03:08PM 1 NOT EVEN ON THIS EMAIL AND HE HAS NO TASK ASSIGNED TO HIM.

03:08PM 2 IT'S THE TEAM, AND THAT'S ELIZABETH HOLMES, IT'S
03:08PM 3 JEFF BLICKMAN, IT'S DR. YOUNG, IT'S MARK PANDORI, AND A LAWYER
03:08PM 4 NAMED BRAD ARINGTON.

03:08PM 5 THIS NEXT DOCUMENT I WANT TO SHOW YOU ON THE TOPIC OF
03:08PM 6 JOURNALISTS IS A DOCUMENT THAT MR. SCHENK SHOWED YOU DURING HIS
03:08PM 7 CLOSING ARGUMENT YESTERDAY, AND HE'S POINTING TO THIS BECAUSE
03:08PM 8 IT'S AN EMAIL DIRECTLY FROM MR. BALWANI TO A GROUP OF PEOPLE AT
03:08PM 9 WALGREENS, INCLUDING JAY ROSAN AND BRAD WASSON, AND IT'S AN
03:09PM 10 ARTICLE FROM A PUBLICATION CALLED "SINGULARITY HUB" AND THE
03:09PM 11 HEADLINE IS SMALL, FAST, AND CHEAP, THERANOS IS THE POSTER
03:09PM 12 CHILD OF MED TECH -- AND IT'S IN WALGREENS. THIS IS FROM
03:09PM 13 NOVEMBER 18TH, 2013.

03:09PM 14 SO THE GOVERNMENT POINTED TO THIS, SEE, HE'S PROVIDING
03:09PM 15 INFORMATION IN ARTICLES FROM WALGREENS THAT HAS INFORMATION IN
03:09PM 16 IT. LET'S LOOK AT WHAT THAT IS.

03:09PM 17 THE FIRST STATEMENT THAT THE GOVERNMENT SAYS IS FALSE IS
03:09PM 18 HENRY FORD WOULD RECOGNIZE THE PRINCIPLE THAT ALLOWS THERANOS
03:09PM 19 TO COMPLETE ACCURATE LAB TESTS WITHIN FOUR HOURS.

03:09PM 20 LET'S PAUSE RIGHT THERE.

03:09PM 21 THESE BLOOD TESTS AT THIS TIME IN NOVEMBER OF 2013, THIS
03:09PM 22 IS GOING ON IN WALGREENS'S OWN STORES. THEY KNOW EXACTLY HOW
03:09PM 23 LONG IT TAKES. THEY KNOW THAT THE BLOOD SAMPLE IS BEING
03:09PM 24 COLLECTED THERE AND TRANSPORTED TO A CENTRAL LAB. THIS IS NOT
03:10PM 25 INFORMATION THAT WALGREENS IS GOING TO LOOK AT AND SAY, OH YES,

03:10PM 1 IT MUST BE GOING ON IN FOUR HOURS. THEY KNOW EXACTLY WHAT'S
03:10PM 2 GOING ON. IT'S THEIR OWN STORES WHERE THE BLOOD COLLECTION IS
03:10PM 3 GOING ON.

03:10PM 4 BY THE WAY, IN THE EMAIL MR. BALWANI DOESN'T COMMENT ON
03:10PM 5 THIS. HE DOESN'T SAY LOOK AT THIS ARTICLE AND LOOK AT WHAT
03:10PM 6 WE'RE DOING. HE JUST SENDS IT WITHOUT EXPLANATION.

03:10PM 7 WALGREENS KNOWS THIS.

03:10PM 8 LET'S GO ON TO THE NEXT POINT.

03:10PM 9 BLOOD IS DRAWN WITH A FINGERSTICK, RATHER THAN A NEEDLE IN
03:10PM 10 THE ARM. THERE ARE NO BOTCHED STICKS, OF COURSE, THERE ARE NO
03:10PM 11 PHLEBOTOMISTS, ONLY MACHINES IN THE THERANOS LABS.

03:10PM 12 WALGREENS KNOW FULL WELL THAT THERE ARE VENOUS DRAWS GOING
03:10PM 13 ON IN THEIR OWN STORES. AND IN 2014 TIME PERIOD, IT IS, LIKE
03:10PM 14 60 PERCENT. AND THIS IS 2013. NO REASON TO THINK IT'S ANY
03:10PM 15 DIFFERENT.

03:10PM 16 SO THE IDEA THAT WALGREENS DOESN'T KNOW THAT WE HAVE
03:10PM 17 PHLEBOTOMISTS AND WE HAVE VENOUS DRAWS, OF COURSE THEY DO.

03:10PM 18 SO MR. BALWANI IS SENDING THIS INFORMATION TO WALGREENS,
03:10PM 19 HE'S FORWARDING AN ARTICLE. THERE'S NO BASIS TO SAY THAT
03:10PM 20 MR. BALWANI IS TRYING TO DECEIVE WALGREENS INTO THINKING THESE
03:10PM 21 THINGS WERE TRUE WHEN HE KNOWS, EVERYONE KNOWS, WALGREENS KNOWS
03:10PM 22 THESE THINGS, THEY KNOW ABOUT THE PHLEBOTOMISTS, THEY KNOW
03:11PM 23 ABOUT THE VENOUS DRAWS, IT WAS IN THEIR OWN PRESS RELEASE FOR
03:11PM 24 GOODNESS SAKES.

03:11PM 25 AND THIS IS ANOTHER ONE OF THOSE RED HERRINGS WHERE THE

03:11PM 1 GOVERNMENT IS TRYING TO TAR MR. BALWANI WITH SOMETHING
03:11PM 2 DECEPTIVE THAT IS REALLY NOT.

03:11PM 3 BUT LET'S GO TO WHAT MR. BALWANI REALLY THOUGHT AND REALLY
03:11PM 4 DID.

03:11PM 5 HERE'S AN INQUIRY FROM A MEDIA SOURCE CALLED G2
03:11PM 6 INTELLIGENCE AND THIS IS SEPTEMBER 10TH, 2013.

03:11PM 7 AND IF THERE'S ANY EVIDENCE OF WHAT MR. BALWANI REALLY
03:11PM 8 INTENDED HERE, THIS IS ONE OF THE KEY THINGS BECAUSE WHAT
03:11PM 9 HAPPENS IS -- LET'S GO TO THE NEXT SLIDE.

03:11PM 10 G2 INTELLIGENCE, AS MR. BLICKMAN SAYS HERE, THIS RON FROM
03:11PM 11 G2 SENDS AN EMAIL TO MR. BLICKMAN AND CALLS HIS PHONE LINE.
03:11PM 12 HIS VOICEMAIL REITERATED THAT HIS DEADLINE IS FRIDAY AND HE'S
03:11PM 13 TRYING TO CONFIRM THE SAME SET OF QUESTIONS SENT YESTERDAY.

03:12PM 14 SO THAT'S WHAT MR. BLICKMAN IS REPORTING, THIS JOURNALIST
03:12PM 15 HAS A DEADLINE, AND I NEED TO GET HIM THE INFORMATION AND HE
03:12PM 16 POSES THE QUESTIONS.

03:12PM 17 SO LET'S LOOK AT WHAT THOSE ARE IN PART. AND THIS IS
03:12PM 18 EXHIBIT 20167.

03:12PM 19 SO MR. BALWANI RESPONDS SEPTEMBER 11TH, 2013. I EDITED
03:12PM 20 THE FOLLOWING. ELIZABETH NEEDS TO DECIDE WHETHER TO SEND THIS
03:12PM 21 AND IF SO, THEN PROVIDE HER THOUGHTS AND EDITS.

03:12PM 22 AND HERE IS ONE OF THE JOURNALIST'S QUESTIONS. HOW MUCH
03:12PM 23 BLOOD IS REQUIRED (IN NANOLITERS OR MICROGRAMS)? ALTHOUGH IT
03:12PM 24 IS MENTIONED IN THE RELEASE, HOW SPECIFICALLY WILL IT BE DRAWN?

03:12PM 25 AND THE ANSWER THAT IS DRAFTED THERE IS, THE BLOOD WILL BE

03:12PM 1 DRAWN IN A THREE STEP PROCESS, ONE, PLACE FINGER WARMER ON
03:12PM 2 PATIENT'S FINGERTIP; TWO, CLEAN THE FINGERTIP AND DEPRESS TINY
03:12PM 3 LANCET ON FINGER; THREE, TECHNICIAN COLLECTS BLOOD IN SMALL
03:12PM 4 DISPOSABLE DEVICES TO FILL OR NANOTAINER TUBES WITH A FEW DROPS
03:13PM 5 OF SAMPLE.

03:13PM 6 SO THAT'S THE ANSWER THAT'S DRAFTED.

03:13PM 7 BUT HERE'S MR. BALWANI'S SUGGESTED EDIT. HE WRITES, FIX
03:13PM 8 THIS, FIX THIS TO ALSO INCLUDE VENIPUNCTURE.

03:13PM 9 SO MR. BALWANI WANTS THIS JOURNALIST TO BE TOLD THAT THERE
03:13PM 10 IS VENIPUNCTURE GOING ON, AND THE GOVERNMENT SAYS, THIS IS SOME
03:13PM 11 KIND OF INTENT THAT MR. BALWANI WANTS TO HIDE THESE TRADITIONAL
03:13PM 12 METHODS FROM THE WORLD WHEN HE'S THE ONE WHO IS SAYING IN THIS
03:13PM 13 RESPONSE TO THIS JOURNALIST AT G2 INTELLIGENCE, TELL THEM IT'S
03:13PM 14 VENIPUNCTURE, LET'S MAKE SURE WE INCLUDE THAT BECAUSE WE'RE
03:13PM 15 ALSO DOING THAT, AND THIS IS THE OPPOSITE.

03:13PM 16 LOOK AT ALL OF THE EVIDENCE. MR. BALWANI'S INTENT, HIS
03:13PM 17 GOOD FAITH, THIS IS ONE OF THOSE PIECES OF EVIDENCE THAT SHOULD
03:13PM 18 REALLY MAKE YOU GIVE PAUSE. TRANSLATE IT INTO REASONABLE DOUBT
03:13PM 19 WHEN THE GOVERNMENT SAYS THAT MR. BALWANI WAS TRYING TO DECEIVE
03:13PM 20 ANYBODY ABOUT THE METHODS BEING USED AT THERANOS'S LAB.

03:14PM 21 OKAY. HERE'S ANOTHER EXAMPLE. SO THIS IS ONE OF THOSE
03:14PM 22 TEXT MESSAGES BETWEEN TWO PEOPLE THE GOVERNMENT CLAIMS ARE
03:14PM 23 COCONSPIRATORS, AND HERE THEY ARE TALKING IN PRIVATE BY TEXT
03:14PM 24 MESSAGE.

03:14PM 25 AND MR. BALWANI WRITES ON JULY 8TH, 2015, AND TELLS

03:14PM 1 MS. HOLMES, "THE HOME PAGE ANNOUNCEMENT FOR CBC," I BELIEVE
03:14PM 2 THAT TO BE A REFERENCE TO CAPITAL BLUE CROSS, "IS TOO DRAMATIC.
03:14PM 3 CHANGE THE FACE OF HEALTH CARE IN PENNSYLVANIA. CAN U CHANGE
03:14PM 4 IT ONCE IN OFFICE. SOMETHING MORE HUMBLE AND ACCURATE."

03:14PM 5 THAT'S WHAT MR. BALWANI WANTS MS. HOLMES TO DO.

03:14PM 6 SO IT'S NOT, GREAT, ELIZABETH, FULL STEAM AHEAD, YOU KNOW,
03:14PM 7 SAY SOMETHING REALLY DRAMATIC AND INACCURATE.

03:14PM 8 HE'S SAYING, NO, LET'S BE HUMBLE AND ACCURATE. THAT'S
03:14PM 9 MR. BALWANI'S INTENT.

03:14PM 10 AND IF YOU WANT TO LOOK AT THE TEXT MESSAGES, YOU KNOW,
03:14PM 11 THAT IS THE OPPOSITE OF, YOU KNOW, SOME KIND OF CONSPIRACY OR
03:14PM 12 INTENT TO DEFRAUD.

03:14PM 13 LET'S SWITCH GEARS HERE FOR A MINUTE AND TALK ABOUT THE
03:14PM 14 THERANOS IP PORTFOLIO.

03:15PM 15 SO WE TALKED ABOUT HOW IMPORTANT WALGREENS WAS TO
03:15PM 16 INVESTORS. BUT THAT WASN'T THE ONLY THING THAT WAS IMPORTANT.
03:15PM 17 WE ALSO TALKED ABOUT THE BOARD BEING IMPORTANT.

03:15PM 18 THE INVESTORS ALSO TESTIFIED ABOUT THE IP PORTFOLIO BEING
03:15PM 19 IMPORTANT TO THEM AS WELL.

03:15PM 20 SO THIS NEXT ITEM HERE IS FROM LISA PETERSON'S BINDER. DO
03:15PM 21 YOU REMEMBER -- I CALL IT LISA PETERSON'S BINDER. IT'S REALLY
03:15PM 22 THE BINDER SENT TO THE DEVOS FAMILY OFFICE, RDV, AND IT'S SENT
03:15PM 23 TO JERRY TUBERGEN, AND MS. PETERSON ENDED UP MAKING A COPY OF
03:15PM 24 TWO BINDERS, AND ONE HAD A NUMBER OF MATERIALS, INCLUDING THIS
03:15PM 25 LENGTHY LIST OF PATENTS AND OTHER IP, INTELLECTUAL PROPERTY.

03:15PM 1 SO ONE OF THEM, AND THIS IS ON PAGE 141 OF EXHIBIT 4858,
03:15PM 2 IS THIS PARTICULAR ITEM DEVICES, METHODS, AND SYSTEMS FOR
03:15PM 3 REDUCING SAMPLE VOLUME. THAT'S A PATENT APPLICATION.

03:15PM 4 AND THEN IT HAS A NUMBER. AND THE DATE IS 9/9/2013.

03:16PM 5 AND IF YOU GO TO THE NEXT SLIDE, MR. ALLEN.

03:16PM 6 I SHOWED YOU THIS YESTERDAY, BUT THIS IS THE PATENT
03:16PM 7 APPLICATION THAT WAS FILED, AND YOU SEE IT'S THE SAME PATENT
03:16PM 8 APPLICATION BEING REFERENCED. AND IF YOU LOOK AT
03:16PM 9 EXHIBIT 20830, IT HAS THE SAME NUMBER AND WITH THE SAME DATE.

03:16PM 10 THIS IS IN THE PATENT APPLICATION, AND I WON'T READ IT AND
03:16PM 11 I'LL LEAVE IT ON THE SCREEN FOR A MINUTE, BUT IT DESCRIBES ALL
03:16PM 12 OF THE EXTENSIVE MODIFICATIONS THAT THERANOS FILED WITH THE
03:16PM 13 PATENT OFFICE THAT THEY WERE MAKING TO THE COMMERCIAL DEVICES
03:16PM 14 IN ORDER TO MODIFY THEM FOR FINGERSTICK USE.

03:16PM 15 AND THEN ON THIS PAGE MORE OF THE PATENT APPLICATION
03:16PM 16 TALKING ABOUT WHAT THEY WERE DOING.

03:16PM 17 SO THIS PATENT APPLICATION WAS SPECIFICALLY REFERENCED,
03:16PM 18 THESE MODIFIED PREDICATE DEVICE, IN MS. PETERSON'S SLIDE DECK.

03:17PM 19 MORE ON DISCLOSURE OF COMMERCIAL DEVICES. SO THIS IS AN
03:17PM 20 EMAIL FROM MS. HOLMES TO SALLY HOJVAT WHO WE SAW BEFORE WAS AN
03:17PM 21 OFFICIAL AT THE FDA. THIS IS FROM OCTOBER 23RD, 2013. YOU SEE
03:17PM 22 IT HAS ATTACHMENTS, AND THEN THERE'S THIS NOTICE TRADE SECRET
03:17PM 23 CONFIDENTIAL COMMERCIAL INFORMATION EXEMPT FROM DISCLOSURE
03:17PM 24 UNDER THE FREEDOM OF INFORMATION ACT.

03:17PM 25 SO THERANOS CONSIDERED THIS INFORMATION, MODIFIED

03:17PM 1 PREDICATE DEVICES, TO BE INTELLECTUAL PROPERTY, YOU KNOW,
03:17PM 2 PROPRIETARY INFORMATION THAT WOULDN'T BE SHARED. IN FACT, AS
03:17PM 3 YOU JUST SAW, THEY FILED A PATENT APPLICATION SO THAT THEY
03:17PM 4 COULD PROTECT THIS INTELLECTUAL PROPERTY.

03:17PM 5 AND NOW THEY'RE SHARING THIS WITH THE FDA.

03:17PM 6 AND LET'S LOOK AT WHAT THEY SHARED.

03:17PM 7 SO THEY SHARED WITH THE GOVERNMENT AGENCY, THE FOOD AND
03:18PM 8 DRUG ADMINISTRATION, THE TESTS RUN IN THERANOS'S CLIA
03:18PM 9 LABORATORY FROM SAMPLES COLLECTED IN THERANOS WELLNESS CENTERS.

03:18PM 10 AND YOU CAN SEE THERE -- LET'S START WITH THE FOOTNOTE AT
03:18PM 11 THE VERY BOTTOM DEFINING THE TERM THERANOS PROTOCOL MEANS
03:18PM 12 FDA-CLEARED ASSAYS RUNNING A THERANOS PROTOCOL (IE, MODIFIED
03:18PM 13 UNDER THE CLIA REGULATIONS). THESE ASSAYS ARE THUS VALIDATED
03:18PM 14 AS LABORATORY DEVELOPED TESTS.

03:18PM 15 SO THESE WERE THE MODIFIED COMMERCIAL DEVICES, AND THEY'RE
03:18PM 16 DISCLOSING IT TO THE FDA, AND YOU CAN SEE WHERE CMP, COMPLETE
03:18PM 17 METABOLIC PANEL, THAT GROUP OF TESTS, YOU CAN SEE THE CHEMISTRY
03:18PM 18 IS THERANOS PROTOCOL, WHICH IS DEFINED AS THE MODIFIED
03:18PM 19 PREDICATE, AND THEN THE DEVICE IS AN FDA CLEARED DEVICE.

03:18PM 20 SO IT'S COMMERCIAL DEVICE, FDA APPROVED, RUNNING THE
03:18PM 21 THERANOS PROTOCOL, SO IT'S MODIFIED.

03:18PM 22 AND THEN THE SAME THING WITH LIPIDS, WHICH IS CHOLESTEROL
03:19PM 23 TESTING AND THINGS LIKE THAT.

03:19PM 24 SO THEY'RE DISCLOSING TO THE FDA EXACTLY WHAT THEY'RE
03:19PM 25 DOING. SOME OF IT IS COMMERCIAL.

03:19PM 1 SO, FOR EXAMPLE, HBA1C IS FDA CLEARED AND APPROVED, AN FDA
03:19PM 2 CLEARED AND APPROVED DEVICE, SO IT'S AN UNMODIFIED COMMERCIAL
03:19PM 3 DEVICE.

03:19PM 4 AND THEN SOME OF THEM ARE TSPU, PSA, THAT'S THE EDISON,
03:19PM 5 AND IT'S RUNNING THERANOS CHEMISTRY.

03:19PM 6 SO THEY'RE DISCLOSING ALL OF THE DIFFERENT METHODS THAT
03:19PM 7 THEY'RE USING DIRECTLY TO THE U.S. GOVERNMENT, THE FOOD AND
03:19PM 8 DRUG ADMINISTRATION.

03:19PM 9 MORE ABOUT DISCLOSURE OF USE OF TRADITIONAL METHODS.
03:19PM 10 LET'S LOOK AT THAT, BECAUSE THE GOVERNMENT SAYS THIS WAS SOME
03:19PM 11 KIND OF A SECRET.

03:19PM 12 SO THIS IS A DOCUMENT THAT WAS PROVIDED TO MS. BENNETT, SO
03:19PM 13 SHE WAS NOTICED OF THIS.

03:19PM 14 AND IF WE GO -- THIS IS IN OCTOBER 25TH OF 2013. SO IT'S
03:19PM 15 GOING TO -- IF YOU LOOK AT THE EMAIL STRING, ALBERTO GUTIERREZ
03:20PM 16 HAS AN EMAIL ADDRESS AT THE FDA, SO HE'S AT THE FDA, AND THEN
03:20PM 17 SARAH BENNETT WE KNOW TO BE A CMS EMPLOYEE, AND IT HAS SOME
03:20PM 18 ATTACHMENTS.

03:20PM 19 AND IF YOU GO TO THE ATTACHMENT, IT TALKS ABOUT PHASE I.
03:20PM 20 THAT'S THAT CENTRAL LAB MODEL I WAS TALKING ABOUT BEFORE.

03:20PM 21 AND YOU CAN SEE RIGHT IN THIS DOCUMENT IT SAYS, IF YOU
03:20PM 22 LOOK AT THE BOX ON THE RIGHT, THE BIG GREEN ON THE RIGHT AT THE
03:20PM 23 TOP OF THAT, IT SAYS "SAMPLES ARE PROCESSED AND RESULTS ARE
03:20PM 24 GENERATED VIA CONVENTIONAL ANALYZERS."

03:20PM 25 AND THEN BELOW THAT IT SAYS, "OR THERANOS SAMPLE

03:20PM 1 PROCESSING UNIT PERFORMS AUTOMATED PREANALYTIC PROCESSING."

03:20PM 2 SO THEY'RE DISCLOSING RIGHT TO CMS AND THE FDA THAT

03:20PM 3 THEY'RE USING CONVENTIONAL ANALYZERS.

03:20PM 4 SO THAT'S THE U.S. GOVERNMENT.

03:20PM 5 LET'S GO TO THE NEXT.

03:20PM 6 MORE ABOUT DISCLOSURE WRITING ON THE WEBSITE. IT SAYS,

03:20PM 7 "INSTEAD OF A HUGE NEEDLE WE CAN USE A TINY FINGERSTICK OR

03:21PM 8 COLLECT A MICRO-SAMPLE FROM A VENOUS DRAW."

03:21PM 9 SO THERE'S NO SECRET ABOUT VENOUS DRAWS. IT'S RIGHT ON

03:21PM 10 THE THERANOS WEBSITE FOR THE WORLD TO SEE.

03:21PM 11 IT'S THE SAME THING IN THE PUBLIC PRESS RELEASE, WE LOOKED

03:21PM 12 AT THAT BEFORE, TRADITIONAL METHODS AS WELL AS FINGERSTICK.

03:21PM 13 THE SAME WITH THE NOVEMBER PRESS RELEASE. WE LOOKED AT

03:21PM 14 THAT EARLIER, TOO. THEY'RE DISCLOSING TRADITIONAL METHODS.

03:21PM 15 SO THERE'S NO HIDING THAT THERANOS IS DOING VENOUS DRAWS.

03:21PM 16 ANYONE CAN LOOK AT THIS, THESE ARE PUBLIC DOCUMENTS, AND

03:21PM 17 THEY'RE TELLING THE GOVERNMENT AS WELL.

03:21PM 18 MR. JHAVERI AGREED THAT THESE MICRO SAMPLES THAT ARE

03:21PM 19 REFERRED TO IN SOME OF THE MATERIAL ARE ALSO VENOUS DRAWS. HE

03:21PM 20 WAS WELL AWARE OF THAT. IT'S JUST A SMALLER VOLUME OF BLOOD

03:21PM 21 TAKEN FROM A VENOUS DRAW, AND THAT'S WHAT MR. JHAVERI TESTIFIED

03:21PM 22 HE KNEW.

03:21PM 23 LET'S TALK ABOUT MR. LUCAS FOR A MINUTE.

03:22PM 24 MR. LUCAS, YOU MIGHT REMEMBER -- WE WILL RETURN TO THIS A

03:22PM 25 LITTLE LATER, BUT HE KNEW THAT THERANOS COULDN'T DO HUNDREDS OR

03:22PM 1 THOUSANDS OF TESTS ON ITS OWN TECHNOLOGY. HE THOUGHT THERE
03:22PM 2 WERE DOZENS OF TESTS, WHICH WAS TRUE. WE SAW DR. ROSENDORFF
03:22PM 3 HAD SIGNED 57 VALIDATION REPORTS. SO DOZENS IS ACCURATE.

03:22PM 4 HERE THOUGH THE QUESTION PUT TO MR. LUCAS IS WHAT ABOUT
03:22PM 5 THE ONES THAT THERANOS COULDN'T DO BEYOND THE DOZENS?

03:22PM 6 THE QUESTION WAS WOULD THEY HAVE TO BE DONE BY SOME OTHER
03:22PM 7 METHOD?

03:22PM 8 AND HE SAYS YES.

03:22PM 9 AND THAT MIGHT BE TRADITIONAL METHODS.

03:22PM 10 AND HE SAID CORRECT.

03:22PM 11 AND THEN THE QUESTION, AND YOU KNEW THAT BEFORE YOU
03:22PM 12 INVESTED IN 2013?

03:22PM 13 AND HE SAID YES.

03:22PM 14 SO MR. LUCAS KNEW FULL WELL THAT THERANOS WAS USING
03:22PM 15 TRADITIONAL METHODS BEYOND THE DOZENS THAT THERANOS COULD DO ON
03:22PM 16 THEIR OWN TECHNOLOGY.

03:22PM 17 NOW, LET'S TALK A LITTLE BIT MORE ABOUT MR. LUCAS. LET'S
03:23PM 18 GO TO THE NEXT SLIDE.

03:23PM 19 SO THE GOVERNMENT HIGHLIGHTED THIS TESTIMONY DURING
03:23PM 20 CLOSING, BUT I WANT TO SHOW YOU THE REST OF THE TESTIMONY THAT
03:23PM 21 THE GOVERNMENT DIDN'T SHOW YOU.

03:23PM 22 SO THE PART THAT THE GOVERNMENT BROUGHT TO YOUR ATTENTION
03:23PM 23 WAS ON LINE 14, "BUT IF THERANOS HAD THE CAPABILITY TO RUN MANY
03:23PM 24 BLOOD TESTS ON ITS ANALYZERS BUT DECIDED THAT IT WOULD NOT MAKE
03:23PM 25 ECONOMIC SENSE TO DO THAT RIGHT AWAY AND INSTEAD USE A

03:23PM 1 COMMERCIAL ANALYZER, THAT'S NOT A BUSINESS DECISION THAT YOU
03:23PM 2 WOULD EXPECT TO BE INVOLVED IN AS AN INVESTOR, IS IT?"

03:23PM 3 MR. LUCAS ANSWERED, "THAT WOULD HAVE BEEN SHOCKING TO ME
03:23PM 4 TO KNOW THAT."

03:23PM 5 SO THE GOVERNMENT HIGHLIGHTED THAT THAT MR. LUCAS WOULD
03:23PM 6 HAVE BEEN SHOCKED ABOUT THE USE OF COMMERCIAL DEVICES, ALTHOUGH
03:23PM 7 AS I JUST SHOWED YOU, HE KNEW THAT BEFORE HE INVESTED, THAT
03:23PM 8 THERE WERE TRADITIONAL METHODS BEING USED.

03:23PM 9 BUT THE QUESTION HERE WAS A LITTLE DIFFERENT. IT WAS
03:23PM 10 ABOUT THE BUSINESS DECISION, AND HE SAID IT WOULD HAVE BEEN
03:23PM 11 SHOCKING.

03:23PM 12 BUT LET'S GO ON TO THE NEXT PAGE, THE NEXT QUESTION THAT
03:23PM 13 THE GOVERNMENT DIDN'T SHOW YOU IN ITS CLOSING YESTERDAY.

03:24PM 14 "QUESTION: BUT IF IT MADE BUSINESS SENSE TO DO IT
03:24PM 15 DIFFERENTLY FOR SOME ASSAY OR CERTAIN ASSAYS, THE MANAGEMENT
03:24PM 16 HAD A RIGHT TO MAKE THAT DECISION; RIGHT?

03:24PM 17 AND THEN MR. LUCAS ANSWERS, "THEY HAVE A RIGHT TO MAKE ANY
03:24PM 18 DECISION. AND --"

03:24PM 19 AND THEN HE GOES ON. "AGAIN, I KNEW THAT SOME TESTS
03:24PM 20 THERANOS COULD NOT DO ON THEIR OWN MACHINES, AND THEY'D HAVE TO
03:24PM 21 BE RUN ON A COMMERCIAL ANALYZER."

03:24PM 22 SO THIS WAS NOT SHOCKING TO MR. LUCAS THAT THERANOS WAS
03:24PM 23 USING COMMERCIAL ANALYZERS. HE KNEW THAT BEFORE HE INVESTED,
03:24PM 24 AND HE INVESTED ANYWAY.

03:24PM 25 SO WHAT I'M ALSO POINTING OUT HERE IS THAT THE GOVERNMENT

03:24PM 1 SHOWED YOU ONLY THAT PAGE BEFORE IT AND NOT HIS ADDITIONAL
03:25PM 2 ANSWER. AND THAT'S JUST MISLEADING. THAT'S THE FULL TESTIMONY
03:25PM 3 THAT MR. LUCAS GAVE.

03:25PM 4 LET'S TALK ABOUT THE PHARMACEUTICAL RELATIONSHIPS. SO
03:25PM 5 THIS IS A REALLY PROMINENT EXAMPLE OF HOW THE GOVERNMENT IS
03:25PM 6 TRYING TO TAR MR. BALWANI WITH SOMETHING THAT REALLY ISN'T
03:25PM 7 RIGHT.

03:25PM 8 SO THERANOS, AS I POINTED OUT YESTERDAY, HAD QUITE A LOT
03:25PM 9 OF PHARMACEUTICAL RELATIONSHIPS. IT HAD CONTRACTS WITH VARIOUS
03:25PM 10 COMPANIES.

03:25PM 11 AND THE GOVERNMENT SPENT A LOT OF TIME TALKING ABOUT TWO,
03:25PM 12 PFIZER AND SCHERING-PLOUGH, AS SOMEHOW FRAUDULENT BECAUSE THERE
03:25PM 13 WERE SOME REPORTS WITH LOGOS ON THEM, AND THE GOVERNMENT'S
03:25PM 14 THEORY IS THAT THESE WERE USED TO MISLEAD INVESTORS BECAUSE IT
03:25PM 15 MADE IT LOOK LIKE THESE COMPANIES HAD DRAFTED REPORTS WHEN THEY
03:25PM 16 HADN'T. THEY PRESENTED A COUPLE OF WITNESSES ABOUT THIS.

03:25PM 17 BUT I REALLY WANT TO UNPACK THIS SO WE UNDERSTAND WHAT
03:25PM 18 MR. BALWANI'S ROLE WAS IN THIS WAS OR LACK OF ROLE.

03:26PM 19 SO, FIRST OF ALL, LET'S START OUT WITH MR. EDLIN'S
03:26PM 20 TESTIMONY. "THOSE RELATIONSHIPS BETWEEN THE PHARMACEUTICAL
03:26PM 21 COMPANIES AND THERANOS WERE LED BY ELIZABETH HOLMES; CORRECT?

03:26PM 22 "CORRECT.

03:26PM 23 "MR. BALWANI WAS NOT INVOLVED IN THOSE RELATIONSHIPS AS
03:26PM 24 FAR AS YOU KNOW; RIGHT?

03:26PM 25 MR. EDLIN, WHO WAS THERE FOR A LONG TIME DURING THIS WHOLE

03:26PM 1 PERIOD, HE UNDERSTOOD THAT MR. BALWANI WAS NOT INVOLVED IN
03:26PM 2 THOSE PHARMACEUTICAL RELATIONSHIPS.

03:26PM 3 AND THEN THE GOVERNMENT CALLED SHANE WEBER, WHO WAS A
03:26PM 4 PERSON WHO WORKED FOR PFIZER, AND HE NEVER MET MR. BALWANI.

03:26PM 5 DR. CULLEN FROM SCHERING-PLOUGH DID NOT RECOGNIZE
03:26PM 6 MR. BALWANI, DID NOT SPEAK WITH HIM, DID NOT EMAIL WITH HIM,
03:26PM 7 HE'S NOT ON ANY OF THE EMAILS.

03:26PM 8 SO DR. CULLEN DOESN'T KNOW OR HAD NOT MET MR. BALWANI
03:26PM 9 EITHER. SO THERE WAS NO INTERACTION THERE.

03:26PM 10 AND THEN, AS I POINTED OUT TO YOU THE OTHER DAY, THERE
03:26PM 11 WERE LOTS OF PHARMA RELATIONSHIPS. THIS IS EXHIBIT 7753. IT
03:27PM 12 HAS ALL OF THESE CONTRACTS: CELGENE, CENTOCOR, MERCK,
03:27PM 13 NOVARTIS, AS WELL AS SCHERING-PLOUGH AND ASTRA-ZENECA.

03:27PM 14 SO LET'S GO BACK TO SHANE WEBER.

03:27PM 15 SO HE TESTIFIED THAT HE HAD CONCERNS AND HE HAD SOME
03:27PM 16 OPINIONS ABOUT THERANOS, AND HE WASN'T DEALING WITH
03:27PM 17 MR. BALWANI, BUT HE DIDN'T EVEN SHARE HIS VIEWS WITH
03:27PM 18 MS. HOLMES.

03:27PM 19 SO WHATEVER MR. WEBER THOUGHT ABOUT THE TECHNOLOGY AND
03:27PM 20 WHAT HE HAD SEEN, HE KEPT TO HIMSELF OR AT LEAST KEPT THEM
03:27PM 21 INTERNALLY BECAUSE HE DIDN'T SHARE THEM WITH MS. HOLMES.

03:27PM 22 SO IF MS. HOLMES DOESN'T EVEN KNOW WHAT SHANE WEBER
03:27PM 23 THINKS, HOW IS MR. BALWANI SUPPOSED TO KNOW ANYTHING WHEN HE
03:27PM 24 NEVER INTERACTED WITH MR. WEBER AT ALL?

03:27PM 25 GO TO THE NEXT SLIDE.

03:27PM 1 SAME WITH DR. CULLEN FROM SCHERING-PLOUGH. SHE HAD SOME
03:27PM 2 THOUGHTS ABOUT THE THERANOS TECHNOLOGY. SHE NEVER VOICED THEM
03:27PM 3 WITH MS. HOLMES.

03:28PM 4 SO OF COURSE MR. BALWANI DOESN'T KNOW THAT EITHER, WHAT
03:28PM 5 DR. CULLEN THOUGHT OR SHANE WEBER THOUGHT. IT'S BASICALLY
03:28PM 6 IRRELEVANT TO MR. BALWANI'S KNOWLEDGE AND INTENT BECAUSE HE
03:28PM 7 NEVER HEARD ANYTHING ABOUT IT.

03:28PM 8 BUT LET'S GO TO THE CORE OF THIS, WHICH IS THE
03:28PM 9 PHARMACEUTICAL REPORT LOGOS.

03:28PM 10 SO TWO PEOPLE, MR. WEBER FROM PFIZER, AND DR. CULLEN FROM
03:28PM 11 SCHERING-PLOUGH, SAID THAT THEY DIDN'T AUTHORIZE THE LOGOS.
03:28PM 12 THERE WERE SOME CHANGES IN THE REPORT IN THE CASE OF
03:28PM 13 SCHERING-PLOUGH THAT DR. CULLEN SAYS SHE DIDN'T AUTHORIZE, AND
03:28PM 14 THAT THE GOVERNMENT PRESENTING THIS IS NOT ONLY SOMETHING THAT
03:28PM 15 IS WRONG, BUT ALSO IT'S SOMETHING THAT MR. BALWANI IS
03:28PM 16 RESPONSIBLE FOR.

03:28PM 17 LET'S TALK ABOUT WHAT MR. BALWANI KNOWS AND WHAT HE
03:28PM 18 DOESN'T KNOW.

03:28PM 19 SO, FIRST OF ALL, JUDGE DAVILA WILL GIVE YOU AN
03:28PM 20 INSTRUCTION ABOUT THE DEFINITION OF KNOWINGLY, AND THE THING I
03:28PM 21 WANT TO HIGHLIGHT RIGHT NOW IS THAT LAST SENTENCE. TO FIND
03:28PM 22 THAT MR. BALWANI ACTED KNOWINGLY, YOU MUST FIND THAT HE HIMSELF
03:29PM 23 HAD KNOWLEDGE OF A FACT AT ISSUE.

03:29PM 24 SO WHETHER MS. HOLMES KNEW SOMETHING, I'M NOT SAYING SHE
03:29PM 25 DID OR DIDN'T, BUT IF MS. HOLMES KNOWS SOMETHING, THAT DOESN'T

03:29PM 1 MEAN MR. BALWANI KNOWS IT. YOU CAN'T TAKE MS. HOLMES'S
03:29PM 2 KNOWLEDGE, IF THE GOVERNMENT HAS EVEN PROVEN THAT, AND SOMEHOW
03:29PM 3 SAY THAT MR. BALWANI ALSO HAS THAT KNOWLEDGE. THAT'S WHAT THE
03:29PM 4 INSTRUCTION SAYS.

03:29PM 5 LET'S GO BACK TO SOMETHING THAT I TALKED ABOUT YESTERDAY,
03:29PM 6 WHICH WAS GLAXOSMITHKLINE. SO THIS IS AN EMAIL THAT MS. HOLMES
03:29PM 7 SENDS TO A PERSON AT GLAXOSMITHKLINE. SO SHE'S NOT TRYING TO
03:29PM 8 HIDE ANYTHING FROM GLAXOSMITHKLINE, BECAUSE THAT'S THE PERSON,
03:29PM 9 THOMAS BREUER, WHO IS GETTING THE EMAIL.

03:29PM 10 AND SHE ATTACHES THREE DOCUMENTS. THE SECOND IS A COPY OF
03:29PM 11 THE VALIDATION REPORT FROM THE GLAXOSMITHKLINE STAFF WHO TESTED
03:29PM 12 THERANOS TECHNOLOGIES AND RESEARCH AT TRIANGLE PARK.

03:29PM 13 LET'S LOOK AT WHAT THOSE DOCUMENTS ARE, AND I'LL QUICKLY
03:30PM 14 GO THROUGH THESE BECAUSE I WENT THROUGH THEM YESTERDAY AS WELL.

03:30PM 15 GSK COMPLETED A COMPREHENSIVE VALIDATION OF THERANOS
03:30PM 16 SYSTEMS IN 2008.

03:30PM 17 SO THE GOVERNMENT HAS PRESENTED NOTHING ABOUT GSK.

03:30PM 18 THIS IS IN DECEMBER OF 2009. MR. BALWANI GETS THIS EMAIL.
03:30PM 19 HE IS ON NOTICE THAT THERE'S A RELATIONSHIP WITH
03:30PM 20 GLAXOSMITHKLINE, THAT THEY DID SOME ANALYSIS OF THERANOS
03:30PM 21 DEVICE, AND THEY COMPLETED A COMPREHENSIVE VALIDATION.

03:30PM 22 SO WHEN THE GOVERNMENT TURNS AROUND AND SAYS
03:30PM 23 REPRESENTATIONS TO INVESTORS THAT THERE WAS NO COMPREHENSIVE
03:30PM 24 VALIDATION BY GSK AND OTHER PHARMACEUTICAL COMPANIES WAS FALSE,
03:30PM 25 THIS IS WHAT HAPPENED.

03:30PM 1 FIRST OF ALL, MR. BALWANI IS BEING TOLD THAT GSK DID THIS
03:30PM 2 WORK AND THERE'S NO EVIDENCE THAT HE THINKS ANYTHING OTHER THAN
03:30PM 3 THAT. AND THE REPORT IS BEING SENT TO A GSK PERSON. SO NOT TO
03:30PM 4 AN INVESTOR. IT'S BEING SENT RIGHT BACK TO GSK BY MS. HOLMES.
03:30PM 5 LET'S GO TO THE NEXT PAGE.
03:30PM 6 THIS IS THE EXCERPTS FROM THE GSK METABOLIC STUDY.
03:31PM 7 AND THEN I WON'T READ THIS AGAIN BECAUSE WE WENT THROUGH
03:31PM 8 THIS YESTERDAY, BUT IF YOU LOOK AT THAT EXHIBIT, WHICH IS
03:31PM 9 15058, IT'S VERY COMPLIMENTARY OF THERANOS'S TECHNOLOGY. THIS
03:31PM 10 IS THE WORK THAT GSK DID.
03:31PM 11 AGAIN, THIS IS SOMETHING THAT THE DEFENSE HAD TO SHOW YOU,
03:31PM 12 NOT -- THE GOVERNMENT DIDN'T SHOW IT TO YOU.
03:31PM 13 THAT'S WHAT MR. BALWANI KNOWS.
03:31PM 14 AND THE GOVERNMENT DIDN'T EVEN TALK ABOUT THE OTHER
03:31PM 15 RELATIONSHIPS, LIKE CELGENE, CENTOCOR, AND ASTRA-ZENECA, BUT
03:31PM 16 THIS IS IMPORTANT BECAUSE THIS IS WHAT MR. BALWANI UNDERSTANDS
03:31PM 17 ABOUT GLAXOSMITHKLINE, AND IT'S THE OPPOSITE OF SOME FRAUDULENT
03:31PM 18 KNOWLEDGE. THIS IS MR. BALWANI BEING TOLD THEY DID
03:31PM 19 COMPREHENSIVELY VALIDATE THE TECHNOLOGY.
03:31PM 20 BUT HERE IS WHERE THE GOVERNMENT IS GOING OFF TRACK.
03:31PM 21 LET'S GO TO THE NEXT DOCUMENT.
03:31PM 22 SO THIS IS AN EMAIL FROM MS. HOLMES TO A PERSON NAMED
03:32PM 23 BRUCE SHEPARD AT WAL-MART, NOT WALGREENS, BUT ANOTHER COMPANY
03:32PM 24 WAL-MART, A BIG RETAILER.
03:32PM 25 AND IT SAYS "BRUCE,

03:32PM 1 GREAT TO TALK WITH YOU."

03:32PM 2 AND THERE'S AN ATTACHMENT. AND IF YOU LOOK AT THE
03:32PM 3 ATTACHMENT, IT'S THE SCHERING-PLOUGH REPORT. AND IT'S A
03:32PM 4 SCHERING-PLOUGH REPORT WITHOUT THE SCHERING-PLOUGH LOGO. IT
03:32PM 5 JUST HAS THE THERANOS LOGO.

03:32PM 6 SO THE GOVERNMENT SAYS, AH-HA, MR. BALWANI GOT THIS EMAIL
03:32PM 7 COPIED TO HIM IN MARCH OF 2010 AND IT HAS A SCHERING-PLOUGH
03:32PM 8 REPORT WITHOUT THE SCHERING-PLOUGH LOGO. SO RIGHT AWAY
03:32PM 9 MR. BALWANI HAS THAT DOCUMENT, RIGHT?

03:32PM 10 AND THEN IF YOU GO TO THE NEXT DOCUMENT, ABOUT A MONTH
03:32PM 11 LATER IN APRIL OF 2010, MS. HOLMES SENDS DR. ROSAN AND
03:32PM 12 ALEX JUNG FROM WALGREENS, WITH A COPY TO MR. BALWANI, THREE
03:32PM 13 REPORTS. ONE IS GSK, WHICH WE JUST LOOKED AT, ONE IS PFIZER,
03:33PM 14 AND THE OTHER ONE IS SCHERING-PLOUGH, AND IS SAYING, "DEAR JAY
03:33PM 15 AND ALEX,

03:33PM 16 "AS PER OUR DISCUSSION, PLEASE FIND THREE INDEPENDENT DUE
03:33PM 17 DILIGENCE REPORTS."

03:33PM 18 SO MR. BALWANI GETS THAT, TOO, ABOUT A MONTH AFTER THE
03:33PM 19 WAL-MART EMAIL.

03:33PM 20 LET'S GO TO THE NEXT PAGE.

03:33PM 21 AND YOU CAN SEE THAT THIS TIME THERE'S THAT REPORT WITH
03:33PM 22 THE GLAXOSMITHKLINE LOGO.

03:33PM 23 AND IF YOU GO TO THE NEXT PAGE, THERE'S THE PFIZER LOGO.

03:33PM 24 AND IF YOU GO TO THE NEXT PAGE, THERE'S THE
03:33PM 25 SCHERING-PLOUGH LOGO.

03:33PM 1 SO JUST COVERING GSK AND PFIZER FIRST.

03:33PM 2 MR. BALWANI GETS THE EMAIL WITH THE GSK DOCUMENT WITH THE
03:33PM 3 GSK LOGO, SO MR. BALWANI HAS EVERY REASON TO BELIEVE THAT THE
03:33PM 4 GSK IS TOTALLY LEGITIMATE, AND THERE'S NO EVIDENCE TO THE
03:33PM 5 CONTRARY.

03:33PM 6 WITH REGARD TO THE PFIZER, THERE'S NO EVIDENCE IN THIS
03:33PM 7 CASE THAT MR. BALWANI HAS ANY KNOWLEDGE OF ANYTHING WRONG WITH
03:33PM 8 THE PFIZER REPORT WHETHER IT'S PUTTING A PFIZER LOGO ON IT OR
03:34PM 9 ANYTHING ELSE.

03:34PM 10 THERE'S NO INFORMATION THAT MR. BALWANI HAS EVER SEEN A
03:34PM 11 VERSION OF A PFIZER REPORT WITHOUT THE LOGO. THERE'S NO
03:34PM 12 DISCUSSION ABOUT PUTTING ANY LOGOS ON IT. THERE'S NO
03:34PM 13 DISCUSSION OF ANY CHANGES MADE TO THE REPORT BY ANYBODY.

03:34PM 14 SO THERE'S JUST NO EVIDENCE IN THE CASE THAT MR. BALWANI
03:34PM 15 KNOWS ANYTHING OTHER THAN WHAT IS BEING REPRESENTED, THAT THERE
03:34PM 16 IS COMPREHENSIVE VALIDATION BY NOT ONLY GSK BUT BY THESE OTHER
03:34PM 17 COMPANIES.

03:34PM 18 BUT LET'S TALK ABOUT SCHERING-PLOUGH IN PARTICULAR.
03:34PM 19 BECAUSE HERE'S THE GOVERNMENT'S THEORY. THIS IS ALL THEY'VE
03:34PM 20 GOT, OKAY?

03:34PM 21 THAT WHEN THE EMAIL WAS SENT FROM MS. HOLMES TO
03:34PM 22 SCHERING-PLOUGH IN APRIL OF 2010, AND YOU CAN SEE THE DOCUMENT
03:34PM 23 ON THE SCREEN THAT HAS THE SCHERING-PLOUGH LOGO, AND IF YOU
03:34PM 24 LOOK DEEPER IN THE REPORT YOU CAN SEE THAT THERE ARE SOME
03:34PM 25 CHANGES MADE TO THE CONCLUSION SECTION COMPARED TO THE ONE THAT

03:34PM 1 WAS SENT TO WAL-MART ABOUT A MONTH EARLIER, THAT THE
03:34PM 2 GOVERNMENT'S THEORY IS THAT MR. BALWANI WAS SUPPOSED TO GET
03:34PM 3 THIS EMAIL WITH SCHERING-PLOUGH, YOU KNOW, BURIED ON PAGE 34 OF
03:35PM 4 THE EMAIL PACKAGE, AND MR. BALWANI WAS SUPPOSED TO SAY, HUH, I
03:35PM 5 SEE THIS REPORT WITH THE SCHERING-PLOUGH LOGO, LET ME GO BACK
03:35PM 6 TO THE EMAIL THAT I GOT A MONTH EARLIER AND COMPARE THAT, AND
03:35PM 7 IT DIDN'T HAVE A LOGO, AND THEN HE'S ALSO SUPPOSED TO LIKE DO
03:35PM 8 SOME KIND OF COMPARISON OF ALL OF THE TEXT TO FIGURE OUT IF
03:35PM 9 IT'S EXACTLY THE SAME, AND THEN CONCLUDE FROM THAT, OH, THERE
03:35PM 10 ARE SOME CHANGES IN THE REPORT, AND THERE'S A LOGO ON IT.

03:35PM 11 AND THEN MORE THAN THAT, THEN MR. BALWANI IS SUPPOSED TO
03:35PM 12 CONCLUDE, WHEN PHARMA IS NOT EVEN HIS PROJECT, PHARMACEUTICAL,
03:35PM 13 HE'S SUPPOSED TO CONCLUDE, OH, AND IT LOOKS LIKE MS. HOLMES
03:35PM 14 MUST HAVE DONE THIS WITHOUT GETTING APPROVAL OF
03:35PM 15 SCHERING-PLOUGH.

03:35PM 16 BUT HOW WOULD HE KNOW THAT? THERE'S NO EVIDENCE THAT
03:35PM 17 MR. BALWANI KNOWS ANYTHING. IT COULD JUST AS WELL BE THAT
03:35PM 18 MS. HOLMES GOT APPROVAL OR HAD SOME FURTHER CONVERSATIONS OR
03:35PM 19 OTHER PEOPLE AT THERANOS DID.

03:35PM 20 SO THERE'S NO EVIDENCE THAT MR. BALWANI KNOWS ANYTHING
03:36PM 21 ABOUT THE SCHERING-PLOUGH REPORT, HAVING A LOGO PUT ON IT THAT
03:36PM 22 WASN'T AUTHORIZED, OR HAVING CHANGES MADE TO IT THAT WASN'T
03:36PM 23 AUTHORIZED.

03:36PM 24 THERE'S NO EVIDENCE OF THAT IN THE CASE OF PFIZER, OR GSK,
03:36PM 25 OR ANY OTHER PHARMACEUTICAL COMPANY.

03:36PM 1 BUT THAT'S ALL THE GOVERNMENT HAS IS THAT MR. BALWANI IS
03:36PM 2 SOMEHOW SUPPOSED TO HAVE DONE THIS COMPARISON.

03:36PM 3 LET'S USE OUR COMMON SENSE HERE. IF YOU GET AN EMAIL AT
03:36PM 4 YOUR PLACE OF BUSINESS OR IN YOUR PERSONAL LIFE, AND YOU'VE GOT
03:36PM 5 SOME SIMILAR EMAIL A MONTH EARLIER, ARE YOU, LIKE, DOING
03:36PM 6 COMPARISONS AND PARSING EVERY WORD? WHY WOULD YOU DO THAT?
03:36PM 7 WHY WOULD MR. BALWANI DO THAT? THERE'S NO REASON. THIS IS IN
03:36PM 8 APRIL OF 2010.

03:36PM 9 SO THAT'S THE GOVERNMENT'S SUM TOTAL OF THEIR THEORY ABOUT
03:36PM 10 WHY MR. BALWANI KNOWS, ACTUALLY KNOWS THAT THERE'S SOMETHING
03:36PM 11 WRONG WITH THE SCHERING-PLOUGH REPORT, AND IT JUST DOESN'T FLY.

03:36PM 12 AND THAT IS NOT SUFFICIENT EVIDENCE BY ANY STRETCH OF THE
03:36PM 13 IMAGINATION TO CONVICT MR. BALWANI OF FEDERAL CRIMINAL OFFENSES
03:37PM 14 FOR DEFRAUDING INVESTORS. WHEN INVESTORS ARE TOLD THIS IS
03:37PM 15 COMPREHENSIVE VALIDATION BY PHARMACEUTICAL COMPANIES OF THE
03:37PM 16 THERANOS TECHNOLOGY, HE HAS EVERY REASON TO BELIEVE THAT IS
03:37PM 17 TRUE, AND THERE'S REALLY NO EVIDENCE TO THE CONTRARY AT ALL IN
03:37PM 18 THIS CASE.

03:37PM 19 AND THAT FLOWS INTO THE INSTRUCTION THAT JUDGE DAVILA WILL
03:37PM 20 GIVE YOU: GOOD FAITH. SO THE MISREPRESENTATION AT ISSUE HERE,
03:37PM 21 THE GOVERNMENT CLAIMS IS A MISREPRESENTATION, IS PHARMACEUTICAL
03:37PM 22 COMPANIES WHO COMPREHENSIVELY VALIDATED.

03:37PM 23 THE QUESTION HERE IS, DID MR. BALWANI HAVE A GOOD FAITH
03:37PM 24 BELIEF IN THE TRUTH OF THOSE MISREPRESENTATIONS?

03:37PM 25 AND THE EVIDENCE HERE SHOWS THAT YES, HE DID.

1 I WANT TO SWITCH GEARS HERE.

2 BY THE WAY, IF ANYONE NEEDS A BREAK, YOU CAN RAISE YOUR
3 HAND. WE CAN TAKE A BRIEF BREAK. I HAVE JUST WANT TO MAKE
4 SURE. OKAY. WE'LL JUST CONTINUE.

5 I WANT TO TALK ABOUT THE MILITARY RELATIONSHIPS THAT
6 THERANOS HAD, BECAUSE THERE'S BEEN SOME TALK IN THIS CASE ABOUT
7 SOME MISREPRESENTATIONS WHERE SUPPOSEDLY INVESTORS WERE TOLD
8 THAT THERANOS TECHNOLOGY WAS ACTUALLY IN USE WITH THE MILITARY
9 TREATING SOLDIERS, FLYING ON MEDEVAC HELICOPTERS, THINGS LIKE
10 THAT.

11 LET ME START OUT BY JUST TALKING ABOUT THAT ISSUE. AND,
12 YOU KNOW, THIS CAME UP WITH A NUMBER OF INVESTORS, BUT AS I'VE
13 SAID A FEW TIMES NOW, MR. TOLBERT TESTIFIED, THERE WAS THIS
14 TAPE RECORDING, AND THAT WAS OUR CHANCE TO HEAR EXACTLY WHAT
15 MS. HOLMES WAS SAYING, IF ANYTHING, ABOUT THE RELATIONSHIP WITH
16 THE MILITARY AND ANY USE OF THERANOS TECHNOLOGY ON MEDEVAC
17 HELICOPTERS.

18 AND WE'LL SEE THIS TESTIMONY IN DETAIL WHEN I TALK ABOUT
19 MR. TOLBERT, BUT THE GOVERNMENT COULD HAVE PLAYED THE TAPE AND
20 WE WOULD HAVE KNOWN EXACTLY WHAT HAPPENED, INSTEAD OF RELYING
21 ON MEMORIES THAT ARE NINE YEARS DISTANT IN SOME CASES.

22 BUT I WANT TO TALK ABOUT WHAT THERANOS ACTUALLY HAD IN
23 TERMS OF RELATIONSHIPS WITH THE MILITARY.

24 AND YOU WILL SEE THAT THIS IS LIKE A TELEPHONE GAME. I
25 DON'T KNOW IF YOU REMEMBER THE GAME CHILDREN PLAY WHERE YOU

03:39PM 1 PASS A MESSAGE ACROSS THE LINE OF PEOPLE AND BY THE END OF THE
03:39PM 2 LINE THE MESSAGE IS A LITTLE GARBLED BECAUSE IT'S GONE THROUGH
03:39PM 3 THE LINE OF TEN PEOPLE OR SOMETHING.

03:39PM 4 AND THIS IS LIKE THAT KIND OF TELEPHONE GAME BUT OVER A
03:39PM 5 PERIOD OF YEARS WHERE OVER TIME YOU CAN SEE WHAT HAPPENED HERE,
03:39PM 6 INVESTORS TOOK THE INFORMATION THAT DID EXIST AND MORPHED IT
03:39PM 7 INTO, OH, I WAS REALLY TOLD THAT THEY WERE FLYING ON MEDEVAC
03:39PM 8 HELICOPTERS.

03:39PM 9 THERE'S A STRONG RELATIONSHIP WITH THE MILITARY THAT
03:39PM 10 EXISTED, AND I'M GOING TO GO THROUGH THAT, BUT THE IDERE THAT
03:39PM 11 MR. BALWANI TOLD PEOPLE THAT IT WAS ACTUALLY FLYING AND
03:39PM 12 TREATING SOLDIERS IS PREPOSTEROUS.

03:39PM 13 SO LET'S TALK ABOUT WHAT EXISTED. SO THIS IS THE MILITARY
03:39PM 14 RELATIONSHIP THAT THERANOS HAD. IT HAD A RELATIONSHIP WITH THE
03:39PM 15 U.S. ARMY BURN CENTER DATED IN 2009; IT HAD A RELATIONSHIP WITH
03:39PM 16 THE SPECIAL OPERATIONS COMMAND OF THE U.S. ARMY; THE U.S.
03:40PM 17 AFRICA COMMAND; AND THE U.S. CENTRAL COMMAND, AND I WANT TO GO
03:40PM 18 THROUGH EACH OF THOSE.

03:40PM 19 MR. EDLIN TESTIFIED THAT IT WAS MS. HOLMES WHO HAD THIS
03:40PM 20 RELATIONSHIP. SO PHARMACEUTICAL AND MILITARY WERE MS. HOLMES'S
03:40PM 21 RESPONSIBILITIES. YOU MAY REMEMBER THAT THESE RELATIONSHIPS
03:40PM 22 STARTED BEFORE MR. BALWANI GOT TO THERANOS SO IT MADE SENSE
03:40PM 23 THAT MS. HOLMES HAD THE RELATIONSHIPS WITH PHARMA AND THE
03:40PM 24 MILITARY. SO THAT'S WHAT MR. EDLIN KNEW, IT WAS MS. HOLMES'S
03:40PM 25 RELATIONSHIPS.

03:40PM 1 BUT HERE'S THE ACTUAL RELATIONSHIP. SO HERE'S THE BURN
03:40PM 2 STUDY. SO IN JULY OF 2013, THIS EMAIL, WHICH IS EXHIBIT 20550,
03:40PM 3 THIS IS MR. EDLIN SENDING AN EMAIL ABOUT ALL OF THE EDISON
03:40PM 4 READERS THAT ARE IN THE FIELD.

03:40PM 5 AND HE SAYS, THERE WERE 40 READERS IN THE FIELD FOR THE
03:41PM 6 AMERICAN BURN ASSOCIATION TRIAL AT EIGHT SITES.

03:41PM 7 THIS IS THE SAME EMAIL WHERE HE ALSO TALKED ABOUT ONE WAS
03:41PM 8 AT WALGREENS DURING THIS PERIOD. BUT THERE WERE 40.

03:41PM 9 SO THERANOS IS PUTTING THEIR TECHNOLOGY OUT THERE IN THE
03:41PM 10 FIELD AT EIGHT DIFFERENT SITES FOR USE IN THIS BURN STUDY.
03:41PM 11 THAT'S WHAT THIS EMAIL SAYS.

03:41PM 12 AND THE BURN STUDY CONDUCTED OVER SEVERAL YEARS RESULTED
03:41PM 13 IN A PUBLISHED REPORT AND THAT'S THE TITLE OF IT, HIGH-VOLUME
03:41PM 14 HEMOFILTRATION IN ADULT BURN PATIENTS WITH SEPTIC SHOCK AND
03:41PM 15 ACUTE KIDNEY INJURY; A MULTICENTER RANDOMIZED CONTROLLED TRIAL.

03:41PM 16 SO THE THERANOS TECHNOLOGY, THE EDISON WAS USED IN A STUDY
03:41PM 17 OVER A PERIOD OF YEARS, AND THE INVESTIGATORS WHO WERE
03:41PM 18 CONDUCTING THE STUDY WERE ABLE TO PUBLISH A PEER REVIEWED STUDY
03:41PM 19 AND USED THE THERANOS DEVICE TO MONITOR THE PATIENTS IN THE
03:41PM 20 BURN STUDY.

03:41PM 21 SO IF SOMEONE WANTED TO SAY THAT, HEY, THE TECHNOLOGY IS
03:42PM 22 NOT WORKING, WE CAN'T USE THIS, THEY CERTAINLY COULD HAVE SAID
03:42PM 23 THAT.

03:42PM 24 INSTEAD, THEY COMPLETED THE STUDY AND PUBLISHED A PEER
03:42PM 25 REVIEWED PAPER AND THAT CAME OUT IN 2017.

03:42PM 1 IN THE BURN STUDY, HERE ARE THE ACTUAL CYTOKINES. SO
03:42PM 2 RIGHT AWAY YOU CAN SEE THESE PARTICULAR MARKERS WERE MEASURED
03:42PM 3 BY A SANDWICH ELISA METHOD ON THE THERANOS 3.0 DEVICE.

03:42PM 4 SO THE GOVERNMENT HAS TRIED TO CLAIM IN THIS CASE, WELL,
03:42PM 5 IT COULD ONLY DO 12 TESTS.

03:42PM 6 WELL, THAT'S NOT TRUE. IT COULD ADAPT THE 3.0 TO DO OTHER
03:42PM 7 TESTS THAT WERE RELEVANT TO THE BURN STUDY THAT YOU SEE ON THE
03:42PM 8 SCREEN RIGHT HERE (INDICATING).

03:42PM 9 AND THEN THE NEXT PAGE, THAT'S THE CONCLUSION, THE HVHF
03:42PM 10 TREATMENT WAS EFFECTIVE IN REVERSING SHOCK AND IMPROVING ORGAN
03:42PM 11 FUNCTION IN CRITICALLY ILL BURN PATIENTS WITH SEPTIC SHOCK AND
03:42PM 12 AKI AND APPEARS SAFE.

03:43PM 13 SO IN ORDER TO GET TO THAT POINT OF CONCLUDING THAT THAT
03:43PM 14 TREATMENT WAS EFFECTIVE, THEY USED THE THERANOS TECHNOLOGY TO
03:43PM 15 MONITOR THOSE PATIENTS OVER A PERIOD OF YEARS, AND, AGAIN,
03:43PM 16 RESULTED IN THIS PEER REVIEWED PUBLICATION.

03:43PM 17 LET'S SWITCH TO AFRICOM. THAT'S THE U.S. AFRICAN COMMAND.

03:43PM 18 SO MR. EDLIN HAD, YOU KNOW, DEEP INVOLVEMENT IN THESE
03:43PM 19 RELATIONSHIPS. AND HE SAYS, THE FIRST STEP OF THAT
03:43PM 20 RELATIONSHIP WITH AFRICOM WAS JUST TO SEE HOW THE DEVICE
03:43PM 21 PERFORMED IN CONDITIONS IN AFRICA?

03:43PM 22 HE SAID RIGHT.

03:43PM 23 BECAUSE THERE ARE EXTREME TEMPERATURES IN AFRICA?

03:43PM 24 RIGHT.

03:43PM 25 AND AFRICOM HAD TO MAKE SURE THE DEVICE COULD WITHSTAND

03:43PM 1 THOSE CONDITIONS?

03:43PM 2 MR. EDLIN SAID CORRECT.

03:43PM 3 SO THAT'S THE FIRST STEP. YOU'VE GOT TO MAKE SURE IT
03:43PM 4 COULD WITHSTAND CERTAIN TEMPERATURES THAT EXIST IN OTHER
03:43PM 5 COUNTRIES, IN AFRICA.

03:43PM 6 AND THEN WHAT DID THERANOS ACTUALLY DO?

03:43PM 7 SO IN JUNE OF 2012, DR. YOUNG REPORTS THAT THEY PERFORMED
03:44PM 8 48 HOURS OF CONTINUAL TESTING OF THE READER AT 110 DEGREES
03:44PM 9 FAHRENHEIT THAT WAS COMPLETED SUCCESSFULLY TONIGHT. WE RAN 100
03:44PM 10 PROTOCOLS SEQUENTIALLY.

03:44PM 11 SO DR. YOUNG FELT GOOD ABOUT RELIABILITY.

03:44PM 12 AND THEN HE SAYS AFTER REMOVING THE DEVICE FROM THE
03:44PM 13 THERMAL TESTING CHAMBER, THE AFRICOM PROTOCOL WAS TESTED
03:44PM 14 SUCCESSFULLY, SO IT IS GOOD TO GO FOR THE DEMO TOMORROW. AND
03:44PM 15 THEN HE TALK TALKS ABOUT A PARTICULAR READER.

03:44PM 16 THEY ARE ACTUALLY TESTING THE DEVICE BECAUSE THEY WANT TO
03:44PM 17 DO WORK WITH AFRICOM.

03:44PM 18 AND YOU MIGHT REMEMBER, BY THE WAY -- JUST GO BACK TO THAT
03:44PM 19 SLIDE FOR A MINUTE, MR. ALLEN, IF YOU CAN. THANK YOU.

03:44PM 20 YOU MIGHT REMEMBER, MR. GROSSMAN TESTIFIED ABOUT HAVING
03:44PM 21 SOME INFORMATION ABOUT THERANOS TESTING THE DEVICE IN EXTREME
03:44PM 22 TEMPERATURES.

03:44PM 23 WELL, THEY DID TEST IT AND OVER THE COURSE OF MANY YEARS,
03:45PM 24 YOU KNOW, COULD MR. GROSSMAN HAVE MORPHED, YOU KNOW, THIS TYPE
03:45PM 25 OF TESTING WITH TESTING IN THE FIELD? YOU KNOW, SURE. YOU

03:45PM 1 KNOW, MEMORIES FADE AND GET DIFFERENT AFTER MANY YEARS, BUT
03:45PM 2 THERANOS DID ACTUALLY TEST THE DEVICE.

03:45PM 3 WHAT HAPPENED IN AFRICA?

03:45PM 4 SO MR. EDLIN WAS DEALING WITH LIEUTENANT COLONEL
03:45PM 5 MELISSA GIVENS, AND YOU CAN SEE HERE THAT MR. EDLIN ASKED SOME
03:45PM 6 QUESTIONS ON THE RIGHT-HAND SIDE. HE SAID HOW WOULD WILL THE
03:45PM 7 DEVICE BE TRANSPORTED IN THE FIELD? IE, DO YOU PLAN ON KEEPING
03:45PM 8 THE DEVICE IN ITS PACKAGING IN BETWEEN USE? WHAT KIND OF
03:45PM 9 CONDITIONS MIGHT BE ON THE MEDEVAC FROM GERMANY TO UGANDA?

03:45PM 10 AND DR. GIVENS, OR LIEUTENANT COLONEL GIVENS RESPONDED,
03:45PM 11 "THE EQUIPMENT AND CARTRIDGES WILL BE FLOWN COMMERCIAL AIR WITH
03:45PM 12 ME ON THE 23RD AND I WILL FLY BACK TO GERMANY ON THE 2ND OF
03:46PM 13 JULY (I CAN'T GIVE FURTHER DETAIL ON TRAVEL). THEY WILL BE
03:46PM 14 STORED IN A HOTEL ROOM WITH AC, BUT TAKEN OUT TO THE TRAINING
03:46PM 15 SITE DURING THE DAY. THE TRAINING SITE HAS AN OPEN AIR
03:46PM 16 BUILDING WITH NO AC AND THE TEMPERATURE WILL BE BETWEEN 100-110
03:46PM 17 DEGREES FAHRENHEIT. I WILL BE TRANSPORTING/STORING ALL IN A
03:46PM 18 HARDENED PELICAN CASE -- THE EQUIVALENT OF A HARD SUITCASE.
03:46PM 19 THIS IS WHAT WE USUALLY USE WHEN WE DEPLOY FOR MOST EQUIPMENT."

03:46PM 20 AND THEN SHE GOES ON, "WHEN WE FLY THE EQUIPMENT FROM
03:46PM 21 UGANDA IT WILL BE ON A NON-PRESSURIZED AIR CRAFT AT ALTITUDES
03:46PM 22 LESS THAN 10,000 FEET. TEMPERATURES WILL RANGE FROM
03:46PM 23 100 DEGREES FAHRENHEIT WITH HIGH HUMIDITY TO 60 DEGREES IN
03:46PM 24 FLIGHT."

03:46PM 25 SO AFRICAN IS TESTING THE DEVICE IN TERMS OF WHETHER IT

03:46PM 1 CAN WITHSTAND THESE CONDITIONS, INCLUDING ON A HELICOPTER IN
03:46PM 2 AFRICA. THAT'S EXHIBIT 1113.

03:46PM 3 SO WHAT HAPPENED AFTER THAT TESTING? LIEUTENANT COLONEL
03:47PM 4 GIVENS, SHE REPORTS BACK TO MR. EDLIN, ELIZABETH HOLMES, AND
03:47PM 5 CHRISTIAN HOLMES. MR. BALWANI WAS NOT ON THIS EMAIL BECAUSE
03:47PM 6 THIS WAS A RELATIONSHIP THAT MS. HOLMES HAD.

03:47PM 7 BUT IT SAYS, "THERANOS TEAM.

03:47PM 8 "I MADE IT BACK FROM 2 TRIPS TO AFRICA AND MANAGED TO WORK
03:47PM 9 THROUGH ALL OF THE CASES IN THE PROTOCOL."

03:47PM 10 LIEUTENANT COLONEL GIVENS REPORTS, "THE MACHINE TRAVELLED
03:47PM 11 WELL AND FUNCTIONED WELL. MY ONLY COMPLAINT IS THE
03:47PM 12 TOUCHSCREEN -- VERY FRUSTRATING."

03:47PM 13 SHE SAID "I WILL BE PREPARING A FULL REPORT AND HAVE
03:47PM 14 SEVERAL PICTURES OF THE MACHINE BEING USED IN CAMEROON, UGANDA
03:47PM 15 AND SOUTH SUDAN."

03:47PM 16 SHE GOES ON. "BECAUSE THE MACHINE SEEMED TO FUNCTION WELL
03:47PM 17 IN THE ENVIRONMENT, I AM GOING TO WRITE A PREPROPOSAL TO SUBMIT
03:47PM 18 TO THE USSOCOM BISC IN HOPES OF GAINING FUNDING FOR A FULL
03:47PM 19 PROPOSAL THROUGH THE USSOCOM BAA FOR EXTRAMURAL BIOMEDICAL
03:48PM 20 RESEARCH AND DEVELOPMENT.

03:48PM 21 "MY GOAL WILL BE TO DEPLOY 3-5 MACHINES IN AFRICA TO USE
03:48PM 22 REAL TIME AT LOCATIONS WHERE WE HAVE PERSISTENT PRESENCE AND
03:48PM 23 COLLECT REAL LABORATORY DATA AND COMPARE IT TO THE CURRENT
03:48PM 24 STANDARD OF CARE."

03:48PM 25 SO THAT WOULD BE THE NEXT STEP THAT LIEUTENANT COLONEL

03:48PM 1 GIVENS AND HER TEAM WOULD TAKE AFTER THIS INITIAL TEST OF
03:48PM 2 WHETHER THE DEVICE COULD WITHSTAND THE CONDITIONS.

03:48PM 3 AND DOCTOR -- I'M SORRY, MR. EDLIN RESPONDS "WE ARE VERY
03:48PM 4 HAPPY TO HEAR THE TRIP WENT WELL AND THAT THERE WERE NO ISSUES
03:48PM 5 WITH THE TRAVEL AND THE FUNCTION MUCH THE DEVICE.

03:48PM 6 "PLEASE NOTE THAT WE HAVE DEVELOPED A FAMILY OF NEXT
03:48PM 7 GENERATION SYSTEMS WHICH INCLUDE A MUCH MORE DYNAMIC AND
03:48PM 8 SENSITIVE TOUCHSCREEN."

03:48PM 9 SO THERANOS TOOK THE INFORMATION TO HEART AND WORKED ON
03:49PM 10 THIS BECAUSE THEY WANT TO HAVE A RELATIONSHIP WITH THE
03:49PM 11 MILITARY.

03:49PM 12 LET'S TALK ABOUT THE SPECIAL OPERATIONS COMMAND.

03:49PM 13 SO WHERE DID THIS CONCEPT OF USING A MEDEVAC -- OR THE
03:49PM 14 DEVICE ON A MEDEVAC HELICOPTER FOR THE MILITARY COME FROM?

03:49PM 15 THIS IS THE PROJECT SCOPE WITH THE SPECIAL OPERATIONS
03:49PM 16 COMMAND.

03:49PM 17 MILITARY APPLICATIONS.

03:49PM 18 "MEDEVAC: THE ABILITY TO TEST AND TRIAGE WOUNDED SOLDIERS
03:49PM 19 AT THE TIME OF IMPACT AND DURING EVACUATION (E.G., IN A
03:49PM 20 HELICOPTER) AND AVOID DELAYED CARE DUE TO UNAVAILABLE MEDICAL
03:49PM 21 INFORMATION WHILE THE SOLDIER IS IN TRANSIT."

03:49PM 22 SO THAT WAS THE PROJECT SCOPE THAT THERANOS WANTED TO DO
03:49PM 23 WITH THE SPECIAL OPERATIONS COMMAND.

03:50PM 24 AND JUST LIKE IN THE CASE OF THE BURN STUDY, THERANOS
03:50PM 25 SHIPPED THE DEVICES, AND JUST LIKE IN THE AFRICOM COMMAND,

03:50PM 1 THERANOS SHIPPED THE DEVICES TO SPECIAL OPERATIONS COMMAND, AND
03:50PM 2 THAT'S WHAT MR. EDLIN CONFIRMED.

03:50PM 3 SO SOCOM HAD THE DEVICES IN THEIR POSSESSION?

03:50PM 4 AND HE SAID CORRECT.

03:50PM 5 SO LET'S TALK ABOUT THE CENTRAL COMMAND.

03:50PM 6 SO WHERE DID THE CONCEPT OF AFGHANISTAN COME FROM?

03:50PM 7 THE GOAL OF THE RELATIONSHIP WITH CENTCOM WHICH IS THE
03:50PM 8 PART OF THE MILITARY THAT DEALS WITH THE MIDDLE EAST WAS TO
03:50PM 9 DEPLOY THERANOS DEVICES TO AFGHANISTAN, AND THE ANSWER IS YES.

03:50PM 10 HERE'S THE EMAIL FROM LIEUTENANT MAJOR CHRISTINE MURPHY.
03:51PM 11 SHE SAYS "FOR YOUR REFERENCE, PLEASE FIND ATTACHED THE APPROVED
03:51PM 12 VERSION OF THE PROTOCOL."

03:51PM 13 AND IF WE LOOK AT THAT ON THE NEXT PAGE, THE STUDY
03:51PM 14 FACILITIES ARE GOING TO BE THE COMBINED JOINT THEATER HOSPITAL,
03:51PM 15 BAGRAM AIRFORCE BASE, AFGHANISTAN.

03:51PM 16 AND THEN THEY BRIEFLY DESCRIBE THE FACILITY. IT'S A
03:51PM 17 ROLE 3 MILITARY TREATMENT FACILITY. TESTING WILL BE PERFORMED
03:51PM 18 IN THE CLINICAL LABORATORY PORTION OF THE FACILITY.

03:51PM 19 SO THAT'S THE PROJECT THAT IS BEING DISCUSSED WITH THE
03:51PM 20 CENTRAL COMMAND.

03:51PM 21 LET'S GO TO THE NEXT PAGE.

03:51PM 22 THE PLAN HERE -- LOE STANDS FOR LIMITED OBJECTIVE
03:51PM 23 EXPERIMENT, IT'S A MILITARY TERM. "THIS LOE WILL DOCUMENT THE
03:51PM 24 FUNCTIONALITY OF THE THERANOS DEVICE IN A FIELD ENVIRONMENT
03:51PM 25 AFTER DEPLOYMENT AND TRANSPORT FROM THE UNITED STATES. THE LOE

03:51PM 1 WILL ALSO DETERMINE THE INFORMATION TECHNOLOGY CAPABILITY OF
03:52PM 2 THE THERANOS DEVICE WITH PRE-EXISTING DEPARTMENT OF DEFENSE
03:52PM 3 NETWORK COMMUNICATIONS HARDWARE AND NETWORK SECURITY
03:52PM 4 CONFIGURATIONS."

03:52PM 5 SO THIS IS WHAT THE MILITARY AND THERANOS ARE AGREEING
03:52PM 6 THEY'RE GOING TO DO.

03:52PM 7 AND THEN MR. EDLIN ACTUALLY TRAVELLED TO A CENTCOM
03:52PM 8 MILITARY BASE IN TAMPA, FLORIDA, MACDILL AIRFORCE BASE, IN
03:52PM 9 SEPTEMBER OF 2012.

03:52PM 10 AND THEN THERE WAS SOME SECURITY TESTS OF THE DEVICE AND
03:52PM 11 IN RESPONSE TO INPUT FROM THE MILITARY, THERANOS ACTUALLY
03:52PM 12 STARTED MODIFYING THE DEVICE TO MAKE IT SMALLER AND LIGHTER AND
03:52PM 13 TRYING TO FULFILL THOSE STANDARDS.

03:52PM 14 SO THERANOS IS DOING REAL WORK WITH THE SCIENTIFIC TEAM ON
03:52PM 15 PREPARING THE DEVICES FOR THE MILITARY.

03:52PM 16 SO WE SAW A MINUTE AGO ONE OF THE THINGS THAT HAD TO BE
03:52PM 17 SOLVED WAS MILITARY AND PARTICULAR NETWORK SECURITY CONCERNS
03:52PM 18 THAT ARE UNDERSTANDABLE FROM THE DEPARTMENT OF DEFENSE WITH
03:53PM 19 COMPUTERS.

03:53PM 20 SO IF WE GO TO THE NEXT SLIDE, THIS IS MR. BALWANI'S ROLE
03:53PM 21 IN THIS. IT WASN'T HIS RELATIONSHIP BUT AS YOU HEARD HE HAS A
03:53PM 22 BACKGROUND IN SOFTWARE AND HE WAS INVOLVED IN THAT TYPE OF
03:53PM 23 TECHNOLOGY AT THERANOS.

03:53PM 24 SO WHAT HAPPENED? MR. BAINIWAL WRITES, DAN, HOW MANY 4S
03:53PM 25 ARE WE DEPLOYING TO AFGHANISTAN?

03:53PM 1 AND MR. EDLIN RESPONDS, WE ARE DEPLOYING 2 BUT MAY ALSO
03:53PM 2 SEND A BACKUP. I'LL CONFIRM THIS.

03:53PM 3 AND THEN MR. EDLIN WRITES TO SUNNY BALWANI, SHOULD WE PLAN
03:53PM 4 ON SENDING A THIRD DEVICE TO BAGRAM, THAT'S THE AIRFORCE BASE
03:53PM 5 IN AFGHANISTAN, AS A BACK UP? SO THAT'S WHAT MR. BALWANI IS
03:53PM 6 BEING ASKED IN FEBRUARY OF 2013.

03:53PM 7 SO THEN IF YOU GO TO THE NEXT SLIDE, MR. BALWANI SAYS ON
03:53PM 8 FEBRUARY 15TH, 2013, "CAN YOU ASK THEM THE FOLLOWING OF THE
03:53PM 9 TEAM IN AFGHANISTAN:

03:53PM 10 "WHAT IS YOUR NETWORK CONFIGURATION?"

03:54PM 11 HE'S ASKING QUESTIONS ABOUT HOW THE SECURITY FOR THE
03:54PM 12 NETWORK IS GOING TO WORK FOR A DEVICE.

03:54PM 13 AND AS YOU'VE HEARD, THE THERANOS DEVICE NEEDS
03:54PM 14 CONNECTIVITY. IT'S TESTING BLOOD SAMPLES, BUT IT'S GOT TO
03:54PM 15 CONNECT TO THE CLOUD TO COMMUNICATE WITH THERANOS COMPUTERS AND
03:54PM 16 ANALYZE BLOOD TESTS AND GIVE RESULTS.

03:54PM 17 SO THEY'RE TRYING TO FIGURE OUT HOW THEY'RE GOING TO SOLVE
03:54PM 18 THIS I.T. PROBLEM AND MR. BALWANI IS ASKING THIS QUESTION AND
03:54PM 19 HE'S ASKING A SERIES OF QUESTIONS ABOUT THAT SUBJECT.

03:54PM 20 MR. BALWANI WRITES ON FEBRUARY 8TH, "WE WILL NEED TO
03:54PM 21 DEPLOY 4S IN AFGHANISTAN AT THE END OF THE MONTH AND NEED TO
03:54PM 22 ABSOLUTE MAKE SURE THAT THE NETWORK UTILITY IN THE DEVICE WORKS
03:54PM 23 FLAWLESSLY. BASICALLY, IN THE ADMIN MUST BE ABLE TO CONNECT TO
03:54PM 24 WI-FI NETWORK AND ALSO CHANGE ANY OR ALL ETHERNET NETWORK
03:54PM 25 SETTINGS."

03:54PM 1 SO MR. BALWANI WANTS TO MAKE SURE IT'S WORKING PROPERLY
03:55PM 2 AND THE NETWORKING IS CORRECT.

03:55PM 3 IF YOU GO TO THE NEXT SLIDE.

03:55PM 4 HE WRITES TO ANTTI KORHONEN, "CAN YOU CREATE A SMALL
03:55PM 5 NETWORK IN A SMALL ROOM DOWNSTAIRS (LIKE AN I.T. LAB) WHERE WE
03:55PM 6 HAVE A ROUTER THAT CREATES AN ETHERNET NETWORK BUT BLOCKS ANY
03:55PM 7 DEVICE FROM CONNECTING TO THE INTERNET USING DIFFERENT
03:55PM 8 NETWORKING POLICIES AND ONLY LEGITIMATE DEVICE THAT CONNECT TO
03:55PM 9 THE ETHERNET ARE ABLE TO CONNECT TO THE INTERNET. WE SHOULD
03:55PM 10 KEEP THIS ROOM TO SIMULATE ALL DIFFERENT CONNECTIVITY SCENARIOS
03:55PM 11 WE WILL SEE IN AFGHANISTAN."

03:55PM 12 SO MR. BALWANI WANTS TO SET UP A LITTLE LAB TO MAKE SURE
03:55PM 13 THAT THEY CAN TEST THE CONNECTIVITY AND MAKE SURE IT WILL
03:55PM 14 FUNCTION CORRECTLY IN AFGHANISTAN.

03:55PM 15 SO THAT'S GOING ALONG. THAT'S IN FEBRUARY OF 2013. AND
03:56PM 16 THE PLAN IS TO SEND THE DEVICE TO AFGHANISTAN.

03:56PM 17 BUT THEY RUN INTO A ROADBLOCK YOU TYPICALLY SEE IN
03:56PM 18 GOVERNMENT AND THAT'S THE FUNDING WAS EXPIRING.

03:56PM 19 SO THIS IS ABOUT SEQUESTRATION, AND THAT'S A FANCY WORD
03:56PM 20 FOR GOVERNMENT BUDGET PROBLEMS BASICALLY.

03:56PM 21 SO IF YOU GO TO THE NEXT PAGE.

03:56PM 22 THIS IS ON JULY 24TH AND THIS IS FROM MARTIN DRAKE, WHO IS
03:56PM 23 A CIVILIAN FROM THE U.S. AIRFORCE U.S. CENTRAL COMMAND. HE
03:56PM 24 SAYS "FUNDING IS EXPIRING AND PERSONNEL ARE BEING RE-DIRECTED
03:56PM 25 TO OTHER ONGOING PROJECTS."

03:56PM 1 IF YOU GO TO THE NEXT SLIDE.

03:56PM 2 THIS IS ON FEBRUARY 27TH, 2013, SO AS EARLY AS THAT.

03:56PM 3 SO REMEMBER, IN FEBRUARY OF 2013 THEY WERE TESTING THE
03:56PM 4 DEVICES THAT THEY WERE SHIPPING TO AFGHANISTAN. THEY WERE
03:57PM 5 GETTING READY TO SHIP THEM. MR. BALWANI WAS WORKING ON THE
03:57PM 6 NETWORKING PIECE WITH OTHER PEOPLE.

03:57PM 7 THEN ON FEBRUARY 27TH, AT THE END OF THAT MONTH,
03:57PM 8 JAMES SOMMER WHO IS A CIVILIAN EMPLOYEE WITH U.S. CENTRAL
03:57PM 9 COMMAND SAYS TO MR. EDLIN, THINGS AT THE DEPARTMENT OF DEFENSE
03:57PM 10 ARE REALLY GETTING MESSED UP WITH THE UPCOMING SEQUESTRATION.
03:57PM 11 THIS WILL AFFECT HOW WE DO THE UPCOMING LOE, LIMITED OBJECTIVE
03:57PM 12 EXPERIMENT.

03:57PM 13 AND THEN MR. EDLIN RESPONDS AND HE SAYS THAT HE HAD SENT
03:57PM 14 AN UPDATE TO MAJOR MURPHY EARLIER THIS MORNING AND HE PASTED
03:57PM 15 THAT IN RESPONSE TO MR. SOMMER.

03:57PM 16 HE SAYS "AS PER OUR PREVIOUS DISCUSSIONS, THE 4S DEVICES
03:57PM 17 WE ARE SHIPPING HAVE BEEN SPECIALLY BUILT FOR THE PURPOSES OF
03:57PM 18 OUR LOE. IN DOING SO WE HAVE HAD TO REVALIDATE AND RETEST
03:57PM 19 EVERY ASPECT OF THE DEVICE CONFIGURATION TO ENSURE THAT THESE
03:57PM 20 SYSTEMS MEET OUR STANDARDS AND EXPECTATIONS. WE HAVE
03:58PM 21 SIGNIFICANTLY ACCELERATED THERANOS'S PREVIOUSLY PLANNED RELEASE
03:58PM 22 OF 4S IN ORDER TO MEET OUR OBJECTIVES FOR THIS PROGRAM.
03:58PM 23 FURTHER, WE HAVE ADDED ADDITIONAL FEATURES," AND IT GOES ON.
03:58PM 24 THEY WANT TO MAKE SURE IT PERFORMS CORRECTLY IN THE THEATER.
03:58PM 25 SO MR. EDLIN IS TALKING ABOUT ALL OF THE WORK THAT

03:58PM 1 THERANOS DID, AND THE MILITARY IS TALKING ABOUT BUDGET

03:58PM 2 PROBLEMS. SO IT GOES WITH THE GOVERNMENT.

03:58PM 3 SO WHAT HAPPENED? THERANOS HAD TO TURN TO OTHER MATTERS.

03:58PM 4 MR. EDLIN CONFIRMED THAT HE WAS DOING EVERYTHING HE COULD DO TO

03:58PM 5 MAKE SURE THE PROJECTS WERE GOING TO SUCCEED. AND THEN HE'S

03:58PM 6 ASKED, AND RESOURCES DID NEED TO BE ALLOCATED?

03:58PM 7 HE SAYS YES, THERANOS COULDN'T DO EVERYTHING ALL AT ONCE.

03:58PM 8 AND THERANOS HAD A CONTRACT WITH WALGREENS?

03:58PM 9 RIGHT.

03:58PM 10 AND IT HAD TO LIVE UP TO THAT CONTRACT?

03:58PM 11 SO THAT WAS ANOTHER EXTENSIVE LABOR INTENSIVE RETAIL

03:58PM 12 ROLLOUT?

03:59PM 13 AND HE SAYS YES.

03:59PM 14 SO THERANOS HAD NOT UNLIMITED RESOURCES EITHER. THE

03:59PM 15 MILITARY WAS HAVING BUDGET PROBLEMS. THEY WERE WORKING ON THIS

03:59PM 16 REALLY HARD AND DEVELOPING THE TECHNOLOGY AND MAKING

03:59PM 17 IMPROVEMENTS. THEY WERE GETTING READY TO SHIP THESE TO BAGRAM

03:59PM 18 AIRFORCE BASE IN AFGHANISTAN, AND THEN THE MILITARY SAID WE

03:59PM 19 HAVE BUDGET PROBLEMS AND THEN THERANOS HAD TO TURN TO THE

03:59PM 20 WALGREENS LAUNCH.

03:59PM 21 SO THAT'S THE STORY OF THE MILITARY RELATIONSHIPS, AND

03:59PM 22 IT'S NOT WHAT THE GOVERNMENT WOULD HAVE YOU BELIEVE, THAT

03:59PM 23 THERE'S BASICALLY NOTHING GOING ON AND THAT ANYTHING ABOUT THE

03:59PM 24 MILITARY REPRESENTED TO INVESTORS IS FALSE.

03:59PM 25 IT IS TRUE THAT THERANOS NEVER HAD ITS DEVICES ACTUALLY

03:59PM 1 TREATING SOLDIERS ON THE BATTLEFIELD, AND IF INVESTORS SAID
03:59PM 2 THAT OR THOUGHT THAT, THEY WERE MISTAKEN.

03:59PM 3 AND IF THEY REMEMBERED THAT AFTER MANY, MANY YEARS, THEY
03:59PM 4 WERE MISTAKEN OR WORSE.

03:59PM 5 BUT AGAIN, AS I'LL TALK ABOUT AGAIN WITH MR. TOLBERT, WE
03:59PM 6 HAD ONE CHANCE TO HEAR WHAT INVESTORS WERE REALLY TOLD ABOUT
04:00PM 7 THAT BY MS. HOLMES, AND THE GOVERNMENT HAD THE TAPE AND WOULD
04:00PM 8 NOT PLAY IT FOR YOU.

04:00PM 9 LET'S TALK ABOUT ANOTHER SUBJECT.

04:00PM 10 YOUR HONOR, I'M HAPPY TO CONTINUE, BUT I'M AWARE IT'S 4:00
04:00PM 11 O'CLOCK.

04:00PM 12 THE COURT: I THINK OUR JURORS SAID THEY COULD
04:00PM 13 EXTEND UNTIL 4:30 TODAY.

04:00PM 14 IS THAT CORRECT? IS THAT INCORRECT FOR ANYONE?

04:00PM 15 I SEE NO HANDS, SO WHY DON'T YOU PRESS ON AND WE'LL STOP
04:00PM 16 AT YOUR NEXT LOGICAL BREAK.

04:00PM 17 MR. COOPERSMITH: YES, YOUR HONOR. THANK YOU.

04:00PM 18 OKAY. I WANT TO SWITCH TOPICS NOW AND TALK ABOUT THE
04:00PM 19 RISKS THAT INVESTORS ACCEPTED.

04:00PM 20 OKAY. LET'S START WITH MR. LUCAS. HE KNOWS AS A SAVVY
04:00PM 21 INVESTOR THAT THERE ARE ALL SORTS OF RISKS ASSOCIATED WITH THE
04:00PM 22 DEVELOPMENT OF THE COMPANY. OF COURSE HE KNOWS THAT.

04:00PM 23 EVERY SINGLE ONE OF THESE INVESTORS, AND YOU SAW THIS
04:00PM 24 SEVERAL TIMES DURING THE TESTIMONY IN THIS CASE, HAD TO SIGN
04:01PM 25 THIS AGREEMENT.

04:01PM 1 AND IN THIS AGREEMENT, WHICH IS EXHIBIT 3530, IS A SERIES
04:01PM 2 OF REPRESENTATIONS THAT THE INVESTORS HAD TO MAKE TO THERANOS
04:01PM 3 ABOUT THEIR WHEREWITHAL, THEIR FINANCIAL ABILITY TO MAKE THIS
04:01PM 4 TYPE OF INVESTMENT.

04:01PM 5 AND MR. LUCAS CERTAINLY TOOK THAT SERIOUSLY.

04:01PM 6 MR. EISENMAN SAID, WELL, HE SIGNED IT, A FORMER LAWYER
04:01PM 7 SIGNED IT, BUT HE DIDN'T REALLY MEAN IT.

04:01PM 8 BUT THESE WERE THE RISKS THAT INVESTORS WERE ACKNOWLEDGING
04:01PM 9 THAT THEY TOOK ON WHEN THEY INVESTED WITH THIS EARLY STAGE
04:01PM 10 COMPANY CALLED THERANOS.

04:01PM 11 FIRST OF ALL, THEY HAD TO ACKNOWLEDGE THAT THEY UNDERSTOOD
04:01PM 12 THAT THERANOS -- I'M SORRY, THEY UNDERSTOOD THAT EACH INVESTOR
04:01PM 13 COULD BEAR THE ECONOMIC RISK OF THE INVESTMENT, COULD DO SO
04:01PM 14 WITHOUT IMPAIRING THE INVESTOR'S FINANCIAL CONDITION, THAT IT
04:01PM 15 COULD HOLD THE SHARES FOR AN INDEFINITE PERIOD AND IT COULD
04:01PM 16 SUFFER, EACH OF THE INVESTORS COULD SUFFER A COMPLETE LOSS OF
04:02PM 17 THE INVESTOR'S INVESTMENT.

04:02PM 18 SO THAT MEANS THAT WHETHER THEY INVESTED \$99,000 IN THE
04:02PM 19 CASE OF MR. EISENMAN IN 2013 OR THEY INVESTED \$99 MILLION OR
04:02PM 20 \$100 MILLION LIKE THE DEVOS FAMILY, THEY WERE ACKNOWLEDGING,
04:02PM 21 EACH ONE OF THEM, THAT THEY COULD AFFORD TO LOSE THAT ENTIRE
04:02PM 22 AMOUNT OF MONEY BECAUSE THEY UNDERSTOOD THAT THIS WAS A
04:02PM 23 SPECULATIVE INVESTMENT.

04:02PM 24 THEY ALSO REPRESENTED THAT THEY HAD ACCESS TO DATA. AND
04:02PM 25 I'VE HIGHLIGHTED THE PART THAT I WANT TO POINT OUT TO YOU.

04:02PM 1 THE INVESTORS UNDERSTOOD THAT DISCUSSIONS THAT THEY HAD
04:02PM 2 WITH THE COMPANY WERE INTENDED TO DESCRIBE CERTAIN ASPECTS OF
04:02PM 3 THE COMPANY'S BUSINESS BUT WERE NOT NECESSARILY A THOROUGH OR
04:02PM 4 EXHAUSTIVE DESCRIPTION.

04:02PM 5 THE INVESTORS ACKNOWLEDGED THAT ANY BUSINESS PLANS
04:02PM 6 PREPARED BY THE COMPANY HAVE BEEN AND CONTINUE TO BE SUBJECT TO
04:02PM 7 CHANGE AND THAT ANY PROJECTIONS, PROJECTIONS, INCLUDED IN SUCH
04:02PM 8 BUSINESS PLANS OR OTHERWISE ARE NECESSARILY SPECULATIVE IN
04:03PM 9 NATURE, AND IT CAN BE EXPECTED THAT SOME OR ALL OF THE
04:03PM 10 ASSUMPTIONS UNDERLYING THE PROJECTIONS WILL NOT MATERIALIZE OR
04:03PM 11 WILL VARY SIGNIFICANTLY FROM ACTUAL RESULTS.

04:03PM 12 SO IN THE CASE OF THE DEVOS FAMILY, IF THERANOS PROJECTED
04:03PM 13 WE THINK IT'S POSSIBLE THAT WE'LL BE IN 900 STORES NEXT YEAR
04:03PM 14 AND WE'RE WORKING TO ACHIEVE THAT, BUT THERE'S EXECUTION RISK,
04:03PM 15 IT MAY NOT HAPPEN, AND THEY'RE ACKNOWLEDGING THAT THESE
04:03PM 16 PROJECTIONS MAY NOT PAN OUT.

04:03PM 17 THAT'S THE NATURE OF THIS KIND OF RISK. AND IF YOU INVEST
04:03PM 18 IN A COMPANY LIKE THERANOS AND YOU'RE TRYING TO MAKE A BOATLOAD
04:03PM 19 OF MONEY, YOU'RE TAKING ON THE RISK, AND THE INVESTORS WERE
04:03PM 20 ACKNOWLEDGING THAT THEY UNDERSTOOD THAT, AND THEY COULD AFFORD
04:03PM 21 TO LOSE THEIR ENTIRE INVESTMENT.

04:03PM 22 GOING TO THE NEXT PAGE.

04:03PM 23 ALL OF THESE INVESTORS ACKNOWLEDGE THAT THIS AGREEMENT WAS
04:03PM 24 THE ENTIRE AGREEMENT THAT THEY HAD WITH THERANOS.

04:04PM 25 LET'S TALK ABOUT SOME ADDITIONAL RISKS THAT INVESTORS

04:04PM 1 UNDERSTOOD.

04:04PM 2 MR. LUCAS, HE HAS HIS INVESTORS SIGN THE VERY SAME THINGS
04:04PM 3 WHEN HE TOOK ON HIS OWN INVESTORS.

04:04PM 4 BECAUSE REMEMBER PEOPLE LIKE MR. LUCAS OR BRIAN GROSSMAN
04:04PM 5 FROM PFM, THEY WEREN'T INVESTING JUST THEIR OWN MONEY, THEY MAY
04:04PM 6 HAVE, BUT THEY ALSO TOOK IN MONEY FROM THEIR OWN INVESTORS TO
04:04PM 7 FUND WHATEVER INVESTMENT THEY WERE MAKING.

04:04PM 8 SO IN THIS CASE MR. LUCAS IS SAYING YEAH, HE HAD HIS OWN
04:04PM 9 INVESTORS SIGN THIS SAME SORT OF STUFF, AND HE WOULDN'T EXPECT
04:04PM 10 THEM TO SIGN IT, HIS OWN INVESTORS, IF HE DIDN'T BELIEVE THAT
04:04PM 11 THOSE REPRESENTATIONS WERE CORRECT.

04:04PM 12 YOUR HONOR, THAT'S THE END OF A TOPIC AND I'M ABOUT TO
04:04PM 13 START A VERY DIFFERENT TOPIC ABOUT CERTAIN INVESTORS AND IT'S A
04:04PM 14 SOMEWHAT LENGTHY SECTION, SO --

04:05PM 15 THE COURT: WELL, I'D LIKE TO TAKE ADVANTAGE OF THE
04:05PM 16 TIME IF POSSIBLE. OUR JURORS HAVE BEEN VERY GENEROUS, SO WHY
04:05PM 17 DON'T WE STOP AT THE BOTTOM OF THE HOUR SHARP.

04:05PM 18 MR. COOPERSMITH: I'M HAPPY TO CONTINUE.

04:05PM 19 THE COURT: THANK YOU.

04:05PM 20 MR. COOPERSMITH: OKAY. LET'S SWITCH TOPICS TO THE
04:05PM 21 SPECIFIC THERANOS INVESTORS THAT YOU'VE SEEN IN THIS CASE ON
04:05PM 22 THE WITNESS STAND.

04:05PM 23 AND THE FIRST ONE I'M GOING TO TALK ABOUT SPECIFICALLY IS
04:05PM 24 BLACK DIAMOND VENTURES. THAT'S THE NAME OF THE COMPANY THAT
04:05PM 25 INVESTED IN THERANOS, BUT THAT'S CHRIS LUCAS'S COMPANY. HE

04:05PM 1 SAID HE WAS THE MOST SENIOR PERSON. HE FOUNDED THE COMPANY.

04:05PM 2 THIS IS AN INVESTMENT ON DECEMBER 31ST, 2013.

04:05PM 3 MR. LUCAS'S PRIMARY CONTACT WAS ELIZABETH HOLMES. HE HAD
04:05PM 4 NO CONTACT WITH MR. BALWANI. HE NEVER MET MR. BALWANI.

04:05PM 5 AND AS HE TESTIFIED, NOTHING THAT MR. BALWANI EVER SAID OR
04:05PM 6 DID INFLUENCED MR. LUCAS'S DECISIONS TO INVEST IN THERANOS.

04:05PM 7 SO LET'S START WITH THAT AS A BASELINE.

04:06PM 8 THEN AS I POINTED OUT TO YOU BEFORE, MR. LUCAS UNDERSTOOD
04:06PM 9 FULL WELL THAT BEYOND THE DOZENS OF TESTS THAT THERANOS THOUGHT
04:06PM 10 THEY COULD DO ON THEIR OWN TECHNOLOGY, WHICH WAS TRUE, THERE
04:06PM 11 MIGHT BE TRADITIONAL METHODS BEYOND THAT, AND HE SAID HE KNEW
04:06PM 12 THAT BEFORE HE INVESTED IN THERANOS.

04:06PM 13 SO HE DIDN'T THINK THIS WAS -- THAT EVERYTHING AT THERANOS
04:06PM 14 WAS TOTALLY COMPLETED OR THERE WASN'T ANY MORE ROOM TO DO MORE
04:06PM 15 RESEARCH AND DEVELOPMENT.

04:06PM 16 MR. LUCAS KNEW FROM EVEN AN EARLY TIME WHEN HE INITIALLY
04:06PM 17 INVESTED BEFORE MR. BALWANI WAS AT THERANOS, BUT BACK IN 2006
04:06PM 18 HE KNEW THAT OVER TIME THERANOS WOULD HAVE DIFFERENT VERSIONS
04:06PM 19 OF THE THERANOS DEVICE, AND THAT THE CONTEMPLATION BACK IN THAT
04:06PM 20 EARLY TIME PERIOD WAS THAT EACH OF THE ITERATIONS WOULD HAVE
04:06PM 21 ADDITIONAL ASSAYS AND DIFFERENT -- MORE BLOOD TESTS THAT THE
04:06PM 22 DEVICES COULD DO.

04:06PM 23 AND THIS IS JUST A PROJECTION BACK IN 2006. OBVIOUSLY IT
04:06PM 24 TOOK LONGER THAN THAT.

04:07PM 25 BUT THAT'S WHAT MR. LUCAS UNDERSTOOD. HE ALWAYS

04:07PM 1 UNDERSTOOD THERE WOULD BE THESE VERSIONS, WHICH IS NOT UNUSUAL,
04:07PM 2 1.0, 2.0, AND SO FORTH, RIGHT?

04:07PM 3 MR. LUCAS UNDERSTOOD, AS I POINTED OUT EARLIER, THAT THE
04:07PM 4 RAGO ARTICLE IN "THE WALL STREET JOURNAL" WAS MARKETING. HE
04:07PM 5 DIDN'T THINK IT COULD DO A THOUSAND TESTS. HE KNEW THAT FULL
04:07PM 6 WELL. THAT WASN'T SOMETHING THAT AFFECTED HIS INVESTMENT.

04:07PM 7 AND THEN MR. LUCAS DID SOMETHING VERY -- WELL, SAID
04:07PM 8 SOMETHING INTERESTING, RIGHT?

04:07PM 9 SO THIS IS EXHIBIT 20698, AND IT'S AN INVESTORS' RIGHTS
04:07PM 10 AGREEMENT FROM FEBRUARY 3RD, 2006. SO THE NUMBER OF INVESTORS
04:07PM 11 THAT YOU HEARD FROM, MR. LUCAS, MR. EISENMAN,
04:07PM 12 PATRICK MENDENHALL, ALSO THE HALL GROUP, ALTHOUGH IN 2006 THEY
04:07PM 13 INVESTED THROUGH MR. LUCAS'S FIRM, BUT THIS INVESTORS' RIGHTS
04:07PM 14 AGREEMENT WAS WHAT THEY HAD TO SIGN BACK IN 2006. SO THIS WAS
04:08PM 15 BEFORE MR. BALWANI WAS AT THERANOS. HE HAD NOTHING TO DO WITH
04:08PM 16 THIS INVESTMENT.

04:08PM 17 BUT HERE'S WHY I'M SHOWING IT TO YOU. SO REMEMBER THESE
04:08PM 18 INVESTORS LIKE MR. LUCAS AND MR. EISENMAN, THESE 2013
04:08PM 19 INVESTORS, THEY WERE INVESTING AT THE END OF THE YEAR IN 2013.

04:08PM 20 AND AT TRIAL, THE GOVERNMENT TRIED TO PAINT THIS PICTURE
04:08PM 21 THAT THERE WAS SOME KIND OF HIGH PRESSURE SALES TACTIC, THAT
04:08PM 22 THEY WERE GIVEN A LIMITED AMOUNT OF TIME AND THEY HAD TO MAKE A
04:08PM 23 DECISION BY THE END OF THE YEAR, AND IT WAS BASICALLY TRYING TO
04:08PM 24 PAINT THIS PICTURE OF SOME KIND OF, AGAIN, I'LL CALL IT A HIGH
04:08PM 25 PRESSURE SALES TACTIC.

04:08PM 1 THAT IS NOT WHAT HAPPENED. AND THIS INVESTORS' RIGHTS
04:08PM 2 AGREEMENT, IF WE LOOK AT IT, GAVE THESE EARLIER INVESTORS THIS
04:08PM 3 RIGHT OF FIRST REFUSAL WHERE THE COMPANY HAD TO OFFER THEM A
04:08PM 4 CHANCE TO INVEST, AND MR. LUCAS TESTIFIED ABOUT THAT.

04:08PM 5 AND BY THE WAY, THAT'S EXHIBIT 20698 IF YOU WANT TO LOOK
04:08PM 6 AT THAT.

04:09PM 7 MR. LUCAS TESTIFIED ABOUT THAT POINT, AND HE SAID IT GAVE
04:09PM 8 THE INVESTORS THE RIGHT, BUT NOT THE OBLIGATION, TO INVEST IF
04:09PM 9 THEY WANTED TO, AND THAT ANYONE WHO SIGNED THIS 2006 INVESTOR
04:09PM 10 RIGHTS AGREEMENT WOULD BE IN THE SAME BOAT.

04:09PM 11 IN OTHER WORDS, YOU CAN SEE ON LINE 15 THERE, THERANOS WAS
04:09PM 12 ENGAGING IN NEW FUNDRAISING, IT WOULD HAVE TO GO TO INVESTORS
04:09PM 13 LIKE MR. LUCAS AND SAY, HEY, DO YOU WANT TO PARTICIPATE IN THIS
04:09PM 14 NEW FUNDRAISING ROUND?

04:09PM 15 AND HE SAID YES.

04:09PM 16 SO THEY HAD TO GIVE THEM THE FIRST RIGHT. THEY DIDN'T
04:09PM 17 HAVE TO DO IT. THEY COULD HAVE PASSED.

04:09PM 18 MR. LUCAS SAID, YOU KNOW, THAT HE HAD TO WORK REALLY HARD
04:09PM 19 IN DECEMBER OF 2013 TO GET ALL OF THIS DONE BEFORE THE END OF
04:09PM 20 THE YEAR. IN FACT, HE SAID HE DIDN'T SHAVE DURING THAT WHOLE
04:09PM 21 TIME.

04:09PM 22 WELL, MR. LUCAS COULD HAVE SHAVED AND HE COULD HAVE NOT
04:09PM 23 DONE IT, AND THEN HE WOULD HAVE HAD A MUCH NICER HOLIDAY SEASON
04:09PM 24 I'M SURE THAN HE HAD.

04:09PM 25 BUT THAT'S WHAT IS GOING ON. IT'S NOT A HIGH PRESSURE

04:10PM 1 SALES TACTIC. IT'S JUST THERANOS FULFILLING THEIR OBLIGATION
04:10PM 2 FROM 2006 TO GIVE THESE PEOPLE THE OPPORTUNITY.

04:10PM 3 AND MR. LUCAS TESTIFIED ABOUT THIS SOME MORE.

04:10PM 4 WALGREENS HAD MADE THIS COMMITMENT TO DO THE NATIONAL
04:10PM 5 ROLLOUT ON DECEMBER 31ST AND WAS GOING TO FUND AN ADDITIONAL
04:10PM 6 \$75 MILLION.

04:10PM 7 MR. LUCAS UNDERSTOOD THAT WHEN WALGREENS IS MAKING THAT
04:10PM 8 KIND OF COMMITMENT AND PUTTING THAT KIND OF MONEY INTO
04:10PM 9 THERANOS, THE SHARE PRICE, THE VALUE OF THERANOS IS LOGICALLY
04:10PM 10 GOING TO GO UP. SO HE WANTED TO GET THIS DONE SO HE COULD GET
04:10PM 11 THE \$15 A SHARE RATHER THAN \$17 A SHARE.

04:10PM 12 MR. LUCAS WAS OFFERED AN OPPORTUNITY IN JANUARY OF 2014 TO
04:10PM 13 BUY MORE SHARES AT THE HIGHER PRICE, AND HE DIDN'T DO THAT.

04:10PM 14 SO THAT'S WHAT WAS GOING ON HERE. AGAIN, THERANOS JUST
04:10PM 15 HONORING ITS COMMITMENT.

04:10PM 16 LET'S GO TO THE NEXT SLIDE.

04:10PM 17 MR. LUCAS DID SOMETHING VERY INTERESTING. HE TESTIFIED HE
04:11PM 18 NEVER HAD DONE THIS BEFORE WITH ALL OF THE INVESTMENTS HE'S
04:11PM 19 BEEN DOING, HE'S A PROFESSIONAL INVESTOR AND HE'S BEEN WORKING
04:11PM 20 AT THIS FOR MANY, MANY YEARS AND HE'S NEVER DONE THIS BEFORE,
04:11PM 21 BUT THAT'S TO SEND A PARTICULAR LETTER TO HIS INVESTORS
04:11PM 22 POINTING OUT THAT HE DOESN'T HAVE THE INFORMATION THAT YOU
04:11PM 23 WOULD WANT TO SEE NORMALLY AND HE WANTED TO MAKE SURE HIS
04:11PM 24 INVESTORS KNEW THAT.

04:11PM 25 AND WHAT DID HE TELL HIS OWN INVESTORS? THEY DIDN'T HAVE

04:11PM 1 FINANCIAL STATEMENTS, THEY DIDN'T HAVE MATERIAL CONTRACTS, AND
04:11PM 2 THERE WERE OTHER THINGS THAT THEY DIDN'T HAVE.

04:11PM 3 SO ALL OF THESE PEOPLE KNEW THIS. MR. LUCAS AND HIS OWN
04:11PM 4 INVESTORS KNEW THAT THERE WAS INFORMATION THAT WAS LACKING.
04:11PM 5 WHY WOULD THEY TAKE A FLYER ON THIS WHEN THEY DIDN'T HAVE IT?

04:11PM 6 WELL, BECAUSE IF THE WALGREENS ROLLOUT WAS SUCCESSFUL,
04:11PM 7 THEY STOOD TO MAKE GAZILLIONS OF DOLLARS AND THAT WAS THE
04:11PM 8 DRIVING FORCE.

04:11PM 9 SO WHEN YOU'RE DOING THIS AND MR. LUCAS IS DOING THIS AND
04:11PM 10 HE'S TELLING THE INVENTORS, HEY, I WANT TO COVER MY OWN SELF
04:12PM 11 HERE AND TELL YOU WE DON'T HAVE THE INFORMATION SO THE
04:12PM 12 INVESTORS DON'T HOLD HIM RESPONSIBLE, THAT IS A COMMUNICATION
04:12PM 13 THAT THIS IS A VERY, VERY RISKY INVESTMENT.

04:12PM 14 THE GOVERNMENT WILL WANT YOU TO BELIEVE THAT THE RISK WAS
04:12PM 15 BACK IN 2006 AND THAT BY 2013 THIS INVESTMENT WAS SOMEHOW
04:12PM 16 DERISKED. BUT THAT'S NOT TRUE. WE ALL KNOW THAT GOING FROM
04:12PM 17 THREE STORES TO THOUSANDS OF STORES, USE YOUR COMMON SENSE,
04:12PM 18 THAT'S NOT AN EASY TEST, AND THAT IS NOT A GUARANTEED TASK,
04:12PM 19 AND THAT IS NOT SOMETHING THAT YOU CAN COUNT ON.

04:12PM 20 BUT CERTAINLY EVERYBODY WAS TRYING THEIR BEST TO MAKE THAT
04:12PM 21 HAPPEN, INCLUDING THERANOS AND INCLUDING WALGREENS.

04:12PM 22 SO THAT'S MR. LUCAS.

04:12PM 23 LET'S SWITCH TO THE HALL GROUP. THAT'S THE INVESTOR.

04:12PM 24 THIS IS A COMPANY LED BY CRAIG HALL, WHO WE DID NOT HEAR, AND
04:12PM 25 HE WAS A DECISION-MAKER AT THE HALL GROUP. AS YOU HEARD, HE

04:12PM 1 WAS, AT ONE POINT, YOU THE LARGEST SHAREHOLDER IN AMERICAN
04:12PM 2 AIRLINES, AND HE'S FROM TEXAS.

04:13PM 3 HIS CHIEF FINANCIAL OFFICER IS BRYAN TOLBERT. THAT'S THE
04:13PM 4 PERSON THAT THE GOVERNMENT BROUGHT IN TO TESTIFY.

04:13PM 5 MR. TOLBERT HAD NO CONTACT WITH MR. BALWANI. MR. BALWANI
04:13PM 6 HAD NO INFLUENCE ON THE DECISION BY THE HALL GROUP TO INVEST.

04:13PM 7 THEN MR. TOLBERT WAS GETTING PERIODIC UPDATES FROM
04:13PM 8 MR. LUCAS. SO WHAT MR. LUCAS KNEW, MR. TOLBERT KNEW.

04:13PM 9 BUT THAT'S BECAUSE BACK IN 2006 AS YOU HEARD, THE HALL
04:13PM 10 GROUP HAD INVESTED IN THERANOS ORIGINALLY, BEFORE MR. BALWANI'S
04:13PM 11 TIME, THROUGH MR. LUCAS'S FIRM, BLACK DIAMOND VENTURES, AND
04:13PM 12 THIS INVESTMENT ULTIMATELY THE HALL GROUP MAKES IN 2013 IS A
04:13PM 13 DIRECT INVESTMENT IN THERANOS.

04:13PM 14 SO MR. TOLBERT AND MR. LUCAS WERE IN CONTACT.

04:13PM 15 AND LET'S GET TO THE THING I'VE BEEN TALKING ABOUT NOW FOR
04:13PM 16 A COUPLE DAYS, AND THAT IS THIS TAPE. SO HERE'S WHAT HAPPENS,
04:14PM 17 OKAY? DECEMBER 2013, AND IN PARTICULAR, THERE'S A
04:14PM 18 DECEMBER 20TH, 2013 CALL WHERE MS. HOLMES IS ON THE LINE WITH
04:14PM 19 INVESTORS. THOSE INVESTORS INCLUDED MR. LUCAS AND MR. TOLBERT,
04:14PM 20 DECEMBER 20TH OF 2013. MR. BALWANI IS NOT ON THE CALL.

04:14PM 21 BUT THE GOVERNMENT ASKED THE QUESTION ON DIRECT
04:14PM 22 EXAMINATION, DO YOU REMEMBER WHETHER MS. HOLMES TALKED ABOUT
04:14PM 23 THE KIND OF TUBES OF BLOOD THAT THERANOS USED VERSUS WHAT
04:14PM 24 TRADITIONAL LAB TESTING INVOLVED?

04:14PM 25 NOW, MR. TOLBERT SAYS IN HIS ANSWER, NOT BECAUSE HE WAS

04:14PM 1 ASKED THE QUESTION BUT HE JUST SAID THIS IN HIS ANSWER, "YOU
04:14PM 2 KNOW, I WOULD HAVE TO LOOK BACK AT THE TRANSCRIPT OF THE CALL,
04:14PM 3 BUT I THINK THERE WAS SOME DISCUSSION ABOUT, YOU KNOW, THE
04:14PM 4 SMALL NANOTAINERS OR CONTAINERS, AND HE GOES ON.

04:14PM 5 AND THEN THE QUESTION FROM THE GOVERNMENT IS, YOU
04:14PM 6 REFERENCED THE TRANSCRIPT OF THE CALL, WHAT DO YOU MEAN? LIKE
04:14PM 7 THEY NEVER HEARD OF THIS BEFORE.

04:14PM 8 WELL, AT SOME POINT THAT PHONE CALL WAS RECORDED, AND
04:14PM 9 THERE WAS A TRANSCRIPTION MADE OF IT.

04:15PM 10 THE QUESTION THEN IS I SEE. LIKE THE GOVERNMENT NEVER
04:15PM 11 HEARD OF THIS.

04:15PM 12 ANSWER: AND SO, YOU KNOW, I'VE -- SO I KNOW THERE'S A
04:15PM 13 TRANSCRIPT OF THAT CALL, AND I JUST HAVEN'T REVIEWED IT.

04:15PM 14 SO OBVIOUSLY IT'S NINE YEARS EARLIER FOR MR. TOLBERT.
04:15PM 15 HE'S TESTIFYING IN APRIL OF 2022, AND THE CALL IS IN DECEMBER
04:15PM 16 OF 2013.

04:15PM 17 SO WHAT ACTUALLY HAPPENED HERE? LET'S GO TO
04:15PM 18 CROSS-EXAMINATION OF MR. TOLBERT.

04:15PM 19 QUESTION: YOU'VE PRODUCED A COPY OF THAT RECORDING IN THE
04:15PM 20 COURSE OF THESE INVESTIGATIONS, HAVEN'T YOU?

04:15PM 21 ANSWER: THAT'S CORRECT.

04:15PM 22 QUESTION: AND YOU'VE DISCUSSED THAT RECORDING WITH THE
04:15PM 23 GOVERNMENT, HAVEN'T YOU?

04:15PM 24 ANSWER: I HAVE.

04:15PM 25 YOU DON'T REMEMBER WORD FOR WORD WHAT MS. HOLMES SAID THAT

04:15PM 1 DAY?

04:15PM 2 I DO NOT.

04:15PM 3 THAT'S HARDLY SURPRISING AFTER NINE YEARS.

04:16PM 4 SO THIS IDEA THAT THE GOVERNMENT WAS SOMEHOW SURPRISED

04:16PM 5 ABOUT THAT TAPE. THEY KNEW ABOUT THE TAPE BECAUSE MR. TOLBERT

04:16PM 6 PRODUCED IT AND DISCUSSED IT WITH THE GOVERNMENT. AND THE

04:16PM 7 GOVERNMENT HAD THAT OPPORTUNITY RIGHT THEN AND THERE TO PLAY

04:16PM 8 YOU EXACTLY WHAT MS. HOLMES SAID.

04:16PM 9 AND WHEN YOU THINK ABOUT THIS CASE AND YOU DELIBERATE, AND

04:16PM 10 YOU THINK ABOUT JUDGE DAVILA'S INSTRUCTIONS HE'S GOING TO GIVE

04:16PM 11 YOU HAVE ABOUT THE LACK OF EVIDENCE, THINK ABOUT WHY THE

04:16PM 12 GOVERNMENT IS NOT AND DID NOT PLAY YOU THAT TAPE OF EXACTLY THE

04:16PM 13 BEST EVIDENCE OF WHAT MS. HOLMES SAID ON THAT DAY,

04:16PM 14 DECEMBER 20TH, 2013, TEN DAYS OR SO BEFORE MR. LUCAS AND

04:16PM 15 MR. TOLBERT INVESTED IN THERANOS.

04:16PM 16 LET'S GO ON.

04:16PM 17 I TOLD YOU MR. LUCAS WAS ON THAT PHONE CALL AS WELL. OF

04:16PM 18 COURSE HE DOESN'T REMEMBER THE EXACT WORDS EITHER. SO WE COULD

04:17PM 19 HAVE LEARNED EXACTLY WHAT THEY WERE TOLD, AND WE COULD HAVE

04:17PM 20 LEARNED MORE THAN THAT.

04:17PM 21 WE COULD HAVE LEARNED HOW MS. HOLMES INTERACTED WITH

04:17PM 22 INVESTORS, WHAT SORT OF STATEMENTS SHE MADE. IF SHE WAS

04:17PM 23 TALKING ABOUT THE MILITARY, WHAT DID SHE SAY IN THIS TIMEFRAME?

04:17PM 24 REMEMBER, MR. GROSSMAN HAD A MEETING JUST AROUND THAT SAME

04:17PM 25 TIME IN DECEMBER OF 2013 WITH THERANOS.

04:17PM 1 SO WHAT IS MS. HOLMES SAYING ABOUT THE MILITARY
04:17PM 2 RELATIONSHIP? THE TECHNOLOGY? ALL OF THAT IN THIS TIME
04:17PM 3 PERIOD?

04:17PM 4 SHE'S GOING TO MEET WITH DIFFERENT INVESTORS. SHE'S
04:17PM 5 TALKING TO DIFFERENT INVESTORS.

04:17PM 6 THAT TAPE WOULD HAVE BEEN VERY HELPFUL TO KNOW. AND THE
04:17PM 7 FACT THAT THE GOVERNMENT DIDN'T PLAY IT JUST SPEAKS VOLUMES
04:17PM 8 ABOUT WHAT THE GOVERNMENT IS TRYING TO DO HERE IN THIS CASE,
04:17PM 9 WHICH IS TO GO WITH WITNESS'S MEMORIES FROM A LONG TIME AGO
04:17PM 10 WITHOUT PLAYING YOU THE ACTUAL WORDS.

04:17PM 11 I WANT TO TALK ABOUT MR. GROSSMAN NEXT. HIS COMPANY WAS
04:18PM 12 CALLED PARTNER FUND MANAGEMENT. THAT WAS AN INVESTMENT MADE BY
04:18PM 13 PFM ON FEBRUARY 6TH, 2014.

04:18PM 14 SO PFM HAD PUT TOGETHER A VERY SOPHISTICATED DEAL TEAM.

04:18PM 15 MR. GROSSMAN, HE HAD DECADES OF EXPERIENCE INVESTING IN
04:18PM 16 THE HEALTH CARE SPACE; MR. KHANNA, WE TALKED ABOUT A LITTLE BIT
04:18PM 17 EARLIER BECAUSE HE HAD TESTS DONE AT THERANOS, A SIMILAR
04:18PM 18 EXPERIENCE IN INVESTING; DR. RABODZEY, INVESTMENT EXPERIENCE.
04:18PM 19 HE WAS ALSO A PH.D. IN BIOENGINEERING FROM M.I.T. SO THIS WAS
04:18PM 20 MR. GROSSMAN'S TECHNICAL EXPERT TO LOOK AT DATA AND REALLY DIVE
04:18PM 21 INTO IT, THAT'S WHAT MR. GROSSMAN SAID.

04:18PM 22 MR. BALASURYAN, HE FOCUSSED ON FINANCIAL MODELING.

04:18PM 23 SO MR. GROSSMAN PUT TOGETHER A SOPHISTICATED TEAM TO HELP
04:18PM 24 EVALUATION THIS INVESTMENT.

04:19PM 25 AND WHEN WE TALK ABOUT MR. GROSSMAN, IT'S REALLY IMPORTANT

04:19PM 1 TO KEEP IN MIND, MR. GROSSMAN ON THE WITNESS STAND, HE
04:19PM 2 TESTIFIED FROM DIRECT EXAMINATION MOSTLY FROM MEMORY. THERE
04:19PM 3 WERE A FEW DOCUMENTS. MOSTLY HE JUST TALKED.

04:19PM 4 IT WAS THE DEFENSE WHO HAD TO SHOW HIM DOCUMENT AFTER
04:19PM 5 DOCUMENT. AND THE BEST EVIDENCE OF WHAT REALLY HAPPENED AND
04:19PM 6 WHAT PFM KNEW, AND THE RISKS THAT THEY KNEW THEY WERE TAKING,
04:19PM 7 AND THE FLYER THEY TOOK ON THERANOS AND ITS WALGREENS ROLLOUT
04:19PM 8 ARE ALL IN THOSE DOCUMENTS, AND THAT'S WHAT I'M GOING TO GO
04:19PM 9 THROUGH WITH YOU IN THE TIME WE HAVE REMAINING TODAY AND WHEN
04:19PM 10 WE MEET AGAIN TOMORROW.

04:19PM 11 SO MR. GROSSMAN.

04:19PM 12 GO TO THE NEXT SLIDE, PLEASE, MR. ALLEN.

04:19PM 13 SO MR. BALWANI SENT MR. GROSSMAN THE EXCEL VERSION OF THE
04:19PM 14 SPREADSHEET SO HE COULD SEE ALL OF THE ASSUMPTIONS BEHIND THE
04:19PM 15 NUMBERS. THAT'S WHAT MR. GROSSMAN WANTED.

04:19PM 16 AND MR. GROSSMAN SAID YES.

04:19PM 17 AND MR. BALWANI ANSWERED QUESTIONS FOR MR. GROSSMAN WHEN
04:20PM 18 MR. GROSSMAN HAD QUESTIONS, AND MR. GROSSMAN AGREED WITH THAT.

04:20PM 19 SO WHAT THIS IS, IS MR. BALWANI IS NOT JUST SENDING A
04:20PM 20 PIECE OF PAPER, HE'S GIVING MR. GROSSMAN AND PFM THE ACTUAL
04:20PM 21 SOFT COPY, THE EXCEL VERSION OF THE FINANCIAL MODEL WITH ALL OF
04:20PM 22 THE ASSUMPTIONS, AND WE'RE GOING TO TALK ABOUT THAT IN SOME
04:20PM 23 DETAIL PROBABLY TOMORROW.

04:20PM 24 MR. GROSSMAN UNDERSTOOD THAT THERE WERE TWO PHASES, THAT'S
04:20PM 25 WHAT I TALKED ABOUT BEFORE, THE PHASE I, THE CENTRAL LAB MODEL

04:20PM 1 WHERE BLOOD WAS COLLECTED AT WALGREENS AND THEN SHIPPED TO
04:20PM 2 THERANOS'S CENTRAL LAB, AND THEN LATER THE PHASE II WHERE UPON
04:20PM 3 FDA APPROVAL THEY COULD PUT DEVICES IN THE STORES.

04:20PM 4 MR. GROSSMAN KNEW FULL WELL THAT AT THE TIME HE WAS
04:20PM 5 MEETING WITH THERANOS TO TALK ABOUT THE INVESTMENT, THEY HAD
04:20PM 6 THREE PATIENT SERVICE CENTERS IN ALL OF WALGREENS, AND THERE'S
04:20PM 7 NO MISTAKE ABOUT THAT.

04:21PM 8 THEY HAD THREE STORES. AND SO OF COURSE MR. GROSSMAN
04:21PM 9 KNOWS. HE'S A VERY SOPHISTICATED, IVY-LEAGUE EDUCATED
04:21PM 10 PROFESSIONAL. AND HE KNOWS GOING FROM THREE STORES TO WHAT HE
04:21PM 11 HOPES TO BE HUNDREDS OF THOUSANDS OF STORES IS GOING TO BE A
04:21PM 12 HUGE, MASSIVE, HEAVY LIFT.

04:21PM 13 EXACTLY AS YOU WOULD EXPECT. WE'VE SEEN THIS BEFORE, BUT
04:21PM 14 WALGREENS WAS ONE OF THE LARGEST RETAILERS IN THE COUNTRY, AND
04:21PM 15 IT HAD THE INFRASTRUCTURE TO ENABLE THERANOS TO DO THIS
04:21PM 16 NATIONWIDE ROLLOUT, AND THAT'S RIGHT IN THE PRESS RELEASE.

04:21PM 17 WE'VE SEEN THIS LETTER BEFORE. WALGREENS WAS COMMITTED TO
04:21PM 18 TAKE ALL STEPS TO A NATIONAL ROLLOUT AND COMMITTED \$75 MILLION
04:21PM 19 TO HELP MAKE THAT HAPPEN. THIS IS HAPPENING RIGHT AROUND THE
04:21PM 20 SAME TIME THAT MR. BALWANI AND MS. HOLMES ARE MEETING WITH
04:21PM 21 MR. GROSSMAN.

04:21PM 22 SO OBVIOUSLY AT THIS POINT THERE ARE VERY, VERY HIGH HOPES
04:21PM 23 FOR THIS. WALGREENS IS MAKING A MAJOR COMMITMENT AND PUTTING
04:22PM 24 IN MAJOR MONEY, AND OF COURSE INVESTORS -- MR. BALWANI IS
04:22PM 25 EXCITED ABOUT THAT, AND HE'S REASONABLY COMMUNICATING THAT

04:22PM 1 EXCITEMENT TO INVESTORS.

04:22PM 2 AND THEN WE'VE SEEN THESE PAGES BEFORE, COMMITMENT TO THE
04:22PM 3 NATIONAL ROLLOUT. I WON'T READ IT AGAIN BECAUSE WE HAVE SEEN
04:22PM 4 IT BEFORE

04:22PM 5 THIS WAS AN INTERESTING EXCHANGE WITH MR. GROSSMAN WHERE
04:22PM 6 HE SAYS, I THINK WE ACTUALLY MADE THE MISTAKE OF CALLING IT A
04:22PM 7 POINT OF CARE TESTING PLATFORM. AND HE IS TALKING ABOUT
04:22PM 8 THERANOS.

04:22PM 9 AND THEN HE IMMEDIATELY STOPPED NO, NO, NO, NO, NO. THIS
04:22PM 10 IS NOT A POINT OF CARE PRODUCT. WE HAVE TAKEN THE ENTIRE LAB
04:22PM 11 AND MINIATURIZED IT. THIS IS A MINILAB. MR. GROSSMAN IS
04:22PM 12 REPORTING THAT.

04:22PM 13 BUT WHAT DID, BACK IN 2010, JOHNS HOPKINS SAY? IT'S NOT
04:22PM 14 REALLY A POINT OF CARE TECHNOLOGY, IT'S A MINILAB. SO WHY
04:23PM 15 WOULD MR. BALWANI THINK THAT IT'S NOT A POINT OF CARE DEVICE,
04:23PM 16 IT'S A MINILAB?

04:23PM 17 WELL, THREE JOHNS HOPKINS'S PHYSICIANS SAID SO ABOUT THE
04:23PM 18 THERANOS DEVICE.

04:23PM 19 OKAY. SO NOW I'M GOING TO START TO TALK ABOUT THE RISKS
04:23PM 20 THAT IT WAS WELL AWARE OF. AND WE'RE NOT GOING TO FINISH, BUT
04:23PM 21 I'LL START. AND THIS IS IN DECEMBER OF 2013. AND THIS WAS AN
04:23PM 22 EMAIL FROM VIVEK KHANNA, WHO WAS MR. GROSSMAN'S COLLEAGUE, TO
04:23PM 23 MR. GROSSMAN, AND HE'S REPORTING ON WHAT HE'S LEARNED.

04:23PM 24 SO LH, YOU MIGHT REMEMBER FROM MR. GROSSMAN'S TESTIMONY,
04:23PM 25 THAT'S A REFERENCE TO LABCORP. THEY THINK THAT THE TECHNOLOGY

04:23PM 1 DOES NOT WORK. THE MENU IS VERY LIMITED COMPARED TO LABCORP
04:23PM 2 AND DGX, WHICH IS QUEST DIAGNOSTICS. THE COST OF DISTRIBUTION
04:23PM 3 TO TESTING CENTERS IS HIGH. HOW DO YOU GET PATIENT REFERRALS
04:24PM 4 INTO THE WAG STORE TO GET BLOOD DRAWN? THE STORE IN PALO ALTO
04:24PM 5 IS NOT FUNCTIONAL... NOT SURE IF THIS IS TRUE. MOST DOCS HAVE
04:24PM 6 A PHLEBOTOMIST IN THEIR OFFICE AND ARE UNLIKELY TO ALLOW THIS
04:24PM 7 REVENUE LEAKAGE.

04:24PM 8 NO OTHER COMPANY IN POINT OF CARE TESTING HAS BEEN
04:24PM 9 SUCCESSFUL. LOOK AT QUEST, THEY SOLD HOMOCUE AT A SUBSTANTIAL
04:24PM 10 LOSS AFTER PAYING TOP DOLLAR.

04:24PM 11 WAG THEY THINK IS VERY EXCITING AND WILL LIKELY BUNDLE
04:24PM 12 WITH THEIR EXISTING PAYOR CONTRACTS.

04:24PM 13 SO THAT'S THE INFORMATION THAT MR. KHANNA IS REPORTING.
04:24PM 14 SO RIGHT AWAY IN THIS EARLY CONSIDERATION, THERE'S INFORMATION
04:24PM 15 THAT THEY'RE GETTING THAT THIS COULD BE RISKY, RIGHT?

04:24PM 16 OKAY. NEXT DOCUMENT, DECEMBER 24TH, SO A LITTLE LATER IN
04:24PM 17 THAT MONTH.

04:24PM 18 DR. RABODZEY, THEIR TECHNICAL EXPERT, HE HAS QUESTIONS.
04:24PM 19 HE HAS NOT SEEN MUCH OF AN ECONOMIC BENEFIT FOR THE HOSPITAL OR
04:25PM 20 PRACTICE TO DRIVE VOLUME THROUGH THERANOS. THERANOS HAS A
04:25PM 21 LIMITED MENU OF TESTS, AND DOCTORS WILL HAVE PROBLEMS SENDING
04:25PM 22 PATIENTS TO LABCORP FOR ONE TEST AND TO THERANOS FOR ANOTHER.

04:25PM 23 SO THEY KNOW THERANOS HAS A LIMITED MENU AND THERE MIGHT
04:25PM 24 BE PROBLEMS WITH THE BUSINESS MODEL. THAT'S EXHIBIT 4063.

04:25PM 25 THE NEXT DOCUMENT, THIS IS IN EARLY JANUARY, MID-JANUARY,

04:25PM 1 REALLY, JANUARY 12TH, 2014.

04:25PM 2 SO MR. KHANNA AGAIN REPORTS TO THE TEAM WITHIN PFM,
04:25PM 3 THERANOS'S GREAT PARTNERS, WAG, SAFEWAY, DEPARTMENT OF DEFENSE
04:25PM 4 STILL TO BE SIZED. AND THEN HE SAYS PRICING AT 50 PERCENT OF
04:25PM 5 MEDICARE IS INTERESTING BUT OTHER COMMERCIAL PAYORS ARE ALREADY
04:25PM 6 REIMBURSING AT 50 TO 70 PERCENT, SO NOT THAT MUCH OF A
04:25PM 7 DISCOUNT.

04:25PM 8 SO MR. KHANNA KNOWS THAT, WELL, MAYBE THE THERANOS PRICING
04:26PM 9 ISN'T SO SPECIAL AFTER ALL.

04:26PM 10 THE RISKS: INTELLECTUAL PROPERTY AS YOU MENTIONED,
04:26PM 11 EXECUTION. WE TALKED ABOUT THAT WHEN YOU START COLLECTING
04:26PM 12 SAMPLES AND RUNNING TESTS IN A REGIONAL CENTER, WHAT IS THE
04:26PM 13 IMPACT ON RESULTS?

04:26PM 14 SO THEY IMMEDIATELY RECOGNIZE THAT TRYING TO SCALE UP AND
04:26PM 15 RUN ALL OF THESE TESTS, THERE COULD BE EXECUTION RISKS WHEN YOU
04:26PM 16 START ACTUALLY COLLECTING SAMPLES.

04:26PM 17 BUT IT'S ONE OF THE MOST INTERESTING COMPANIES THEY HAVE
04:26PM 18 MET. IT ALL COMES DOWN TO EXECUTION. SO GOING FROM THREE
04:26PM 19 STORES TO THOUSANDS.

04:26PM 20 JANUARY 24TH. NOW, THIS IS INTERESTING. SO WHAT HAPPENED
04:26PM 21 HERE IS THAT DR. RABODZEY IS DIGGING INTO THE DATA, RIGHT? AND
04:26PM 22 HE SAYS, "HERE IS SOMETHING TO DISCUSS WITH THERANOS: WHILE
04:26PM 23 THERE IS NO CLEAR GUIDELINE ON COEFFICIENT OF VARIATION NEEDED
04:27PM 24 FOR CLIA CERTIFICATION BY TEST, IT IS USUALLY UNDER 5 PERCENT."

04:27PM 25 HE SAYS, "BELOW IS A DESCRIPTION OF PARVOVIRUS,

04:27PM 1 P-A-R-V-O-V-I-R-U-S, TEST WITH A CV OF 4.5 PERCENT.

04:27PM 2 "SAME TEST FROM THERANOS HAS ABOUT 15 TO 20 PERCENT
04:27PM 3 INTERCARTRIDGE VARIATION.

04:27PM 4 "SOME OF THEIR TESTS," THERANOS TESTS, "HAVE POOR R2,
04:27PM 5 WHICH IS A BIT CONCERNING."

04:27PM 6 THAT'S THE CORRELATION BETWEEN THERANOS'S DEVICES AND THE
04:27PM 7 COMMERCIAL DEVICES.

04:27PM 8 SO HERE'S THE QUESTION, RIGHT? SO THIS DATA IS COMING
04:27PM 9 FROM THERANOS, THIS DATA FROM WITHING THERANOS'S RESEARCH AND
04:27PM 10 DEVELOPMENT IS NOT AVAILABLE. SO THEY'RE GETTING THIS DATA
04:27PM 11 FROM THERANOS.

04:27PM 12 SO THERANOS ISN'T SUGAR COATING THIS. THEY'RE NOT GIVING
04:27PM 13 PFM SOME KIND OF ROSY PICTURE, AND YOU'RE GOING TO WANT A FRAUD
04:28PM 14 AND LET'S GIVE THEM ALL OF THE GOOD DATA AND HIDE ALL OF THE
04:28PM 15 BAD DATA.

04:28PM 16 THEY'RE GIVING THEM THE GOOD AND THE BAD. THEY ARE GIVING
04:28PM 17 DATA SO THAT MR. -- OR DR. RABODZEY CAN DIG INTO THIS AND
04:28PM 18 FIGURE OUT WHAT IS GOING ON AND HE CAN SEE WITH HIS OWN EYES
04:28PM 19 THAT THERE ARE SOME ISSUES THAT HE'S RAISING.

04:28PM 20 AND I'LL LEAVE YOU WITH THIS BEFORE WE BREAK FOR THE DAY,
04:28PM 21 IS THAT WHEN WE GET TO RDV, THE DEVOS FAMILY, THEY WERE GIVEN
04:28PM 22 TWO BINDERS OF MATERIALS, AND HE'S TESTIFIED ONLY ABOUT ONE.
04:28PM 23 THAT SECOND BINDER IS THE DATA. IT'S CHOCK-FULL OF ALL OF THE
04:28PM 24 SCIENTIFIC DATA. AND RDV DECIDED NOT TO LOOK AT THAT, BUT
04:28PM 25 DR. RABODZEY DID, AND HE KNOWS FULL WELL. AND IF MR. BALWANI

04:28PM 1 OR THERANOS HAD SOME KIND OF INTENT TO DEFRAUD MR. GROSSMAN,
04:28PM 2 WHY WOULD THEY GIVE HIM THIS DATA TO ALLOW DR. RABODZEY TO MAKE
04:28PM 3 THOSE CONCLUSIONS?

04:28PM 4 AND THAT RIGHT THERE IS REASONABLE DOUBT ON INTENT TO
04:28PM 5 DEFRAUD.

04:28PM 6 THANK YOU FOR YOUR CAREFUL ATTENTION AND PATIENCE TODAY,
04:28PM 7 AND I'LL SEE YOU TOMORROW WHERE I WILL RESUME MY REMARKS.

04:29PM 8 AGAIN, THANK YOU FOR YOUR PATIENCE AND HAVE A GOOD
04:29PM 9 EVENING.

04:29PM 10 THE COURT: THANK YOU.

04:29PM 11 LADIES AND GENTLEMEN, WE'LL TAKE OUR BREAK. PLEASE
04:29PM 12 REMEMBER TOMORROW WE'LL BEGIN AT 12:00. I'LL HOPE YOU'LL
04:29PM 13 COLLECT YOURSELVES SO WE CAN BEGIN AT NOON.

04:29PM 14 AGAIN, I'LL REMIND YOU OF THE ADMONITION PLEASE. WHEN YOU
04:29PM 15 LEAVE HERE IN BETWEEN THE TIME YOU RETURN, DO NOT DO ANYTHING
04:29PM 16 IN ANY WAY TO LEARN ANYTHING ABOUT THE CASE, DISCUSS, LISTEN,
04:29PM 17 OR IN ANY WAY LEARN ANYTHING ABOUT THIS CASE.

04:29PM 18 HAVE A GOOD EVENING.

04:29PM 19 THANK YOU FOR YOUR PATIENCE. I'LL ASK YOU TOMORROW
04:29PM 20 WHETHER WE CAN STAY UNTIL PERHAPS TO THE SAME AMOUNT OF TIME
04:29PM 21 TOMORROW OR EVEN CLOSER TO 5:00. I'M NOT TOO SORRY THAT I'M
04:29PM 22 TRYING TO SQUEEZE OUT AS MUCH TIME AS WE CAN. WE'RE VERY CLOSE
04:29PM 23 TO GETTING THE CASE TO YOU, AND ALL OF US WOULD LIKE TO HAVE
04:29PM 24 THAT ACCOMPLISHED. I HAVE SOME CONFIDENCE WE'LL GET THAT DONE
04:29PM 25 THIS WEEK AFTER TALKING WITH THE LAWYERS. SO HAVE A GOOD

04:30PM 1 EVENING. WE'LL SEE YOU TOMORROW. THANK YOU.

04:30PM 2 (JURY OUT AT 4:30 P.M.)

04:30PM 3 THE COURT: THANK YOU. PLEASE BE SEATED. THE

04:30PM 4 RECORD SHOULD REFLECT THAT OUR JURY HAS LEFT FOR THE DAY.

04:30PM 5 ANYTHING FURTHER BEFORE I STEP DOWN?

04:30PM 6 MR. SCHENK: NO, YOUR HONOR.

04:30PM 7 MR. COOPERSMITH: NO, YOUR HONOR.

04:30PM 8 THE COURT: I'M GOING TO ASK MR. COOPERSMITH AND

04:30PM 9 MR. SCHENK, IF YOU COULD JUST CHECK WITH OUR COURTROOM DEPUTY

04:30PM 10 WHEN SHE RETURNS, SHE JUST HAS A LITTLE NOTE ABOUT SCHEDULING

04:30PM 11 FOR YOU.

04:30PM 12 MR. SCHENK: YES, YOUR HONOR.

04:30PM 13 THE COURT: GREAT. THANK YOU. WE'LL SEE YOU

04:30PM 14 TOMORROW.

04:30PM 15 (COURT ADJOURNED AT 4:30 P.M.)

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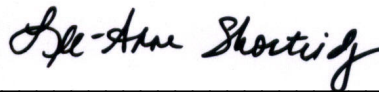
CERTIFICATE OF REPORTERS

WE, THE UNDERSIGNED OFFICIAL COURT REPORTERS OF THE
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO
HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS
A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
ABOVE-ENTITLED MATTER.



IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8076



LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

DATED: JUNE 22, 2022